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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 360.

W. H. CARFER, SHERIFF OF WOOD COUNTY, WEST VIRGINIA, APPELLANT,

vs.

C. T. CALDWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF WEST VIRGINIA.

FILED JULY 27, 1905.

(19,862.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 28, 1905.

1 Be it remembered, that, heretofore, to-wit: at a circuit court of the United States for the northern district of West Virginia, continued and held at Wheeling, in said district, on the 5th day of April, 1905, the following order was made and entered of record, to-wit:

Ex Parte CHARLES T. CALDWELL.

This day Charles T. Caldwell presented in open court his petition, duly cer-ified, alleging among other things, that he is unlawfully restrained of his liberty and detained in the custody of W. H. Carfer, sheriff of Wood county, under and by virtue of an alleged writ of attachment, alleged to have been issued by one James Seaman, chairman of an alleged committee of investigation now sitting at Charleston, West Virginia; said alleged writ having been issued on the 31st day of March, 1905, and addressed to the sheriff of Wood county, a copy of which writ is filed with the petition of the said Caldwell, and praying a writ of *habeas corpus* for the production of the body of the said Caldwell before this court, and that the day and cause of his detention may be inquired into.

It is therefore ordered that the writ of *habeas corpus* prayed for in the said petition do issue, directed to W. H. Carfer, sheriff of Wood county, commanding him in the name of the United States of America, to produce before this court the body of the said Caldwell, on the 20th day of April, 1905, at the Federal court room in the city of Clarksburg, West Virginia, together with the day and the cause of his arrest and detention. And it appearing from the face of said writ issued by said Seaman that same is void, it is further ordered that until the said day the said W. H. Carfer, sheriff as aforesaid, and all other persons or officers acting or pretending to act by, through or under the authority of the said writ, be and the same are hereby commanded, ordered and directed to cease and refrain from attempting to exercise any authority or restraint over the said Caldwell. It is further ordered that a copy of this
2 order duly certified and served upon the said Carfer, sheriff, shall be in lieu of the regular writ of *habeas corpus*.

Petition.

(Filed April 5, 1905.)

In the Circuit Court of the United States for the Northern District of West Virginia.

To the honorable judges of said court:

Your petitioner, Charles T. Caldwell, respectfully represents unto your honors that he has been attached and arrested by the sheriff of Wood county, West Virginia, and is now unlawfully detained in

the custody of said sheriff, under and by virtue of a certain order to the said sheriff directed, signed by James Seaman, chairman of an alleged investigating committee appointed by the house of delegates of the legislature of West Virginia, or by the speaker thereof, which appointment is alleged to have been made by the late speaker of the house of delegates of the legislature of West Virginia; and which said writ is dated on the 31st day of March, 1905.

Your petitioner further respectfully represents that he is a citizen and resident of and in the county of Wood and State of West Virginia, and was arrested under the alleged writ of attachment; a copy of which writ is filed herewith as part hereof, as Exhibit "A" which writ shows upon its face all the alleged grounds and reasons for its issuance.

Petitioner further represents and alleges that the said alleged committee has no jurisdiction over the subject matter therein recited.

Second. The said alleged committee has no jurisdiction or authority of law to issue a writ of attachment, or to require perforce of law, or otherwise, the attendance of this petitioner before said alleged committee at Charleston, West Virginia.

Third. That to arrest your petitioner by the sheriff of Wood
3 county, West Virginia, under said alleged writ of attachment is depriving your petitioner of his constitutional rights and liberty.

Fourth. That the alleged house of delegates, which adjourned *sine die*, as shown by the records of said house of delegates, on the 24th day of February, 1905, has no power constitutionally or otherwise to appoint a committee with the powers and for the purposes named in the alleged resolution, after the said legislature had adjourned *sine die*.

Fifth. The officer whose official record was in question at the time of the adoption of said resolution is no longer an officer, but his term of office has expired, and he is now a private citizen.

Sixth. The alleged committee has no legal jurisdiction, authority or power, either by its own appointed agent, or the sheriff or other officer of the State, to issue or have executed the writ complained of against your petitioner.

For the foregoing and other reasons, appearing upon the face of the attachment and proceedings, and the laws of the State of West Virginia and the Constitution of the United States, to deprive your petitioner of his liberty as a citizen of the State, it is apparent your petitioner is unlawfully attached and arrested, and is unlawfully restrained of his liberty; and is now unlawfully held in the custody of the sheriff of Wood county, by the said sheriff, under the alleged authority aforesaid.

Therefore, your petitioner humbly prays that your honor's said court, now in session, will issue your most gracious writ of *habeas corpus*, commanding the sheriff of Wood county to produce the body of your petitioner before your honorable court, with the day and cause of his detention.

CHAS. T. CALDWELL.

STATE OF WEST VIRGINIA, Wood County, } *To wit:*

Charles T. Caldwell, the petitioner named in the foregoing bill,
4 being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information, and that so far as they are therein stated to be upon information, he believes them to be true.

CHAS. T. CALDWELL.

Taken, sworn to and subscribed before me this 3rd day of April, 1905.

W. S. ALLEN,
Notary Public for Wood Co., W. Va.

EXHIBIT "A" WITH PETITION.

(Filed April 5, 1905.)

5 State of West Virginia to the sheriff of Wood county, Greeting:

Whereas, the house of delegates, at the regular session thereof, did on the 24th day of February, 1905, adopt a preamble and resolution in words and figures following, to-wit:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable, and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White, had or has any agreement, understanding, or contract with any one whereby the fees and emoluments of the office of secretary of state were to be shared with him, in any way, manner or form, either directly to himself or indirectly, through any other person, form or corporation; and whether Governor Albert B. White, did ever in fact, in any way, manner or form, receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses, and to send for persons and papers, to appoint a sergeant-

at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct such investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such
6 compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates, on the certificate of the chairman of the committee, and

Whereas, the Honorable Fred Paul Grosscup, speaker of the said house of delegates, by authority and in pursuance of said resolutions, did on the said 24th day of February, 1905, appoint as such committee John A. Preston, Haymond Maxwell and James A. Seaman, members of said house of delegates, to ascertain and report on the matters in the said resolution specified; and whereas, the said John A. Preston, Haymond Maxwell and James A. Seaman as such committee, by authority of such resolution and appointment, did on the 2nd day of March, 1905, meet at the State capitol building, in the city of Charleston, and did then and there organize said committee by electing James A. Seaman, a member of said committee, as chairman thereof, and

Whereas, at a subsequent meeting of said committee, to-wit, on the 28th day of March, 1905, it was then and there ordered that C. T. Caldwell and Reese Blizzard, gentlemen, be summoned to appear and be before said committee at the State capitol in the city of Charleston, West Virginia, on the 31st day of March, 1905, to give evidence before said committee touching the matters and things in the said resolution set forth, and thereupon the said James A. Seaman, chairman of said committee, in pursuance of said order, did on the said 28th day of March, 1905, issue such summons, directed to the sheriff of Wood county, commanding him to summon the said C. T. Caldwell and Reese Blizzard to appear and be before the said committee at the time and place last aforesaid, to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of; and it appearing that said summons was duly served upon the said C. T. Caldwell and Reese Blizzard, and each of them, on the 28th day of March, 1905, in the county of Wood and State aforesaid, as is shown by the return of said sheriff, endorsed thereon, in the words and figures following, to-wit:

7 "Executed March 28th, 1905, by delivering a copy of the within writ in person to C. T. Caldwell and Reese Blizzard, in Wood county, West Virginia.

W. H. CARFER, S. W. C."

And the said C. T. Caldwell and Reese Blizzard, and each of them, having failed and refused to attend and be before the said committee at the time and place aforesaid, in obedience to said summons,

These are therefore to command you, the said sheriff of Wood county, in the name of the State of West Virginia, to forthwith attach and take into your custody the bodies of said C. T. Caldwell

and Reese Blizzard, and each of them, and have them before the said committee at the State capitol, in the city of Charleston, in the State of West Virginia, to answer said committee of a contempt in failing to attend and testify before said committee as aforesaid, and to be further dealt with according to law, and have then and there this writ.

Given under my hand as chairman of said committee, at the city of Charleston, in the State of West Virginia, this the 31st day of March, 1905, and of the State the 42nd year.

____ ____,
Chairman of said Committee.

Order Continuing Hearing.

And at another day, to-wit: at a circuit court of the United States for the northern district of West Virginia, continued and held at Parkersburg, in said district, on the 20th day of April, 1905, the following order was made and entered of record, to-wit:

In re CHARLES T. CALDWELL. *Habeas Corpus.*

By agreement of counsel for all the parties hereto, including W. H. Carfer, sheriff, and the committee whose chairman issued the process in question, it is ordered that this proceeding be continued for the period of two weeks, or to such time as nearly thereto as possible as may suit the convenience of the parties and the court, and at such place as the court may designate. And during the
8 period of such continuance the terms and provisions of the former order entered herein shall remain in full effect.

Order Filing Answer of Sheriff, etc.

And at another day, to wit: on the 24th day of May, 1905, the following order was made and entered of record, to-wit:

The following two orders having been heretofore directed to be entered on the 19th day of May, 1905, and having been inadvertently omitted from the record, are now ordered to be entered *nunc pro tunc.*

Ex Parte C. T. CALDWELL. Upon a Proceeding in *Habeas Corpus.*

This day W. H. Carfer, sheriff of Wood county, the said C. T. Caldwell being here present in court, tendered his return to the writ of *habeas corpus* heretofore issued in the above matter; which return is ordered to be filed, together with the four several exhibits returned therewith.

And the said C. T. Caldwell, having heretofore been discharged from custody pending this proceeding, it is ordered that he be discharged until the further order of this court, to be made herein.

Return of W. H. Carfer, Sheriff.

(Filed May 19, 1905.)

In the Circuit Court of the United States for the Northern District of West Virginia.

In re C. T. CALDWELL.

To the honorable judges of said court:

W. H. Carfer, to whom the within and annexed writ is directed, has now here before the said court the body of C. T. Caldwell, therein named, as thereby commanded.

And the said W. H. Carfer does hereby certify that the cause of the detention of the said C. T. Caldwell, is a certain order or
9 warrant, directed to the undersigned as the sheriff of Wood county, State of West Virginia, signed by James A. Seaman, chairman of an investigating committee, appointed by the speaker of the house of delegates, under, in accordance with, in pursuance of, and as authorized and directed by, a resolution passed and adopted by the house of delegates of the State of West Virginia on the 24th day of February, 1905; a copy of which said resolution, duly certified by the clerk of the said house of delegates and the keeper of the rolls of the State of West Virginia, is hereto attached, marked Exhibit No. 1, with this return, and is hereby made a part of this return.

I do hereby further certify, that the legislature of West Virginia, and the house of delegates of the State of West Virginia, met and assembled in regular, biennial session, at the capitol of West Virginia, in the city of Charleston, on the 11th day of January, 1905. And said session of the legislature of West Virginia, and of said house of delegates thereof, were in regular session, as aforesaid, on the 24th day of February 1905, and at the time the said resolution, set forth in said Exhibit No. 1, was adopted and passed.

And I do further certify, that at the time the said resolution was passed, Albert B. White, sometimes written, A. B. White, and who is referred to in the said resolution, was the governor of the State of West Virginia, and continued to be the governor of the said State of West Virginia, up to the 4th day of March, 1905; and that on the 4th day of March, 1905, William M. O. Dawson, was inaugurated governor of the State of West Virginia, and on that day became governor of the said State, and has been governor thereof ever since; but that during nearly all of the term of the said Albert B. White, to-wit: from the 4th day of March, 1901, up to the 3rd day of March, 1905, the said William M. O. Dawson, was the secretary of state of the State of West Virginia.

And I do further certify that immediately after the said resolutions were passed and adopted, to-wit: on the 24th day of
10 February, 1905, the speaker of the said house of delegates appointed the said James A. Seaman, John A. Preston, and

Haymond Maxwell, all of whom were then and still are, members of the said house of delegates of the said State of West Virginia, as the committee to be appointed and as authorized by said resolution; and that said committee, so appointed, as aforesaid, met before the 31st day of March, 1905, to-wit: on the 2nd day of March, 1905, and organized and elected the said James A. Seaman, as chairman of said committee; and the said committee proceeded to perform the duties required of it under and by virtue of said resolution.

I do further certify, that on the 28th day of March, 1905, the said committee decided and determined, that in the investigation of the matters referred to in said resolutions, and in performing its duties under said resolutions, it needed the evidence of said C. T. Caldwell, and for the purpose of taking the evidence of the said C. T. Caldwell, the said committee, did, on the 28th day of March, 1905, cause a subpœna to be issued, requiring the said C. T. Caldwell to appear before the said committee to testify on the 31st day of March, 1905, at a session of said committee then to be held in the city of Charleston, in the county of Kanawha; that said summons requiring the attendance of the said C. T. Caldwell, was placed in the hands of the sheriff of Wood county, in which county the said C. T. Caldwell then resided, and said summons was duly served upon the said C. T. Caldwell, by the sheriff of said Wood county, on the 28th day of March, 1905, a true copy of which said summons or subpœna, and the return of the said sheriff of said Wood county thereon, showing the service thereof, is hereto attached marked Exhibit No. 2, as a part of this return.

I do further certify, that when the said committee met in the said city of Charleston, on the said 31st day of March, 1905, the day on which the attendance of the said C. T. Caldwell was required by the said summons or subpœna, so served upon him as aforesaid, the said committee called for the said C. T. Caldwell, but the said
11 C. T. Caldwell failed to attend the said meeting of said committee, and failed to appear before the said committee, and failed even to go to the city or place where the meeting of the said committee was then and there being held.

And thereupon, the said committee, by virtue of the powers vested in it by the said resolutions contained in said Exhibit No. 1, and under the provisions of section 7 of chapter 12 of the Code of West Virginia of 1899, and the laws of the State of West Virginia, passed and entered an order for the purpose of enforcing obedience to the said summons which had been disobeyed by the said C. T. Caldwell, and then and there for the purpose of enforcing obedience to said summons, which had been disobeyed, ordered and directed that an attachment should issue, directed to the sheriff of Wood county, in which county of Wood, the said C. T. Caldwell then and there resided and has ever since resided; all of which will appear from the proceedings of the said committee, ordering said summons to be issued, and said attachment to be issued, a copy of which proceed-

ings, duly signed by the chairman of said committee, is herewith filed marked Exhibit No. 4 as a part of this return.

And thereupon, the said order and attachment was issued, a copy of which attachment is herewith filed marked Exhibit No. 3; and the same was placed in the hands of the sheriff of Wood county, for service upon the said C. T. Caldwell. And acting under said attachment, and by virtue of the authority contained in said resolutions, set forth in Exhibit No. 1, and the laws of the State of West Virginia, and in obedience to the said order of attachment, the undersigned, who was then and there during all the time of the happening of the events hereinbefore alleged, sheriff of the said county of Wood, proceeded to attach and arrest the said C. T. Caldwell, and I did arrest the said C. T. Caldwell, under and according to the terms of the said order and attachment, and the said proceedings hereinbefore referred to, and the events hereinbefore alleged,
12 and the action of the said committee hereinbefore alleged and said attachment, I do hereby certify as the cause of the detention of the said C. T. Caldwell.

I do further certify, that the said C. T. Caldwell, James Seaman, Haymond Maxwell and the undersigned, were, during all the times aforesaid, and still are, citizens, residents and inhabitants of the northern district of West Virginia; and that the said John A. Preston was, during all the time aforesaid, and still is, a citizen, resident and inhabitant of the southern district of West Virginia.

This 18 day of May, 1905.

W. H. CARFER,
Sheriff of Wood County, West Va.

EXHIBIT No. 1, WITH ANSWER.

"Mr. Seaman submitted the following:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one, whereby the fees and emoluments of the office of secretary of state were to be divided or shared with him in any way, manner or form, either directly to himself or indirectly through any other person, firm or corporation; and whether Governor Albert B. White did ever in fact in any way,

manner or form receive any of the fees or emoluments of the office of secretary of state.

13 Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct said investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates on the certificate of the chairman of the committee.

On motion of Mr. Seaman, reference of the resolution to a committee was dispensed with, and it was taken up for immediate consideration, and adopted.

Thereupon, the speaker appointed as the committee provided for in the resolution, Mr. Seaman, Mr. Maxwell (of Harrison), and Mr. Preston."

STATE OF WEST VIRGINIA,
Office of Clerk of House of Delegates.

I, Harry Shaw, clerk of the house of delegates of the legislature of this State and, as such clerk, keeper of the rolls, having carefully examined the foregoing preambles and resolution with the recorded and approved proceedings of the house of delegates of February the 24th, 1905 do hereby certify the same to be a true and correct transcript therefrom. I further certify that the said preambles and resolution were adopted by the house of delegates on February 24th, 1905; that Mr. Seaman who submitted the said preambles and resolution for consideration and conducted the proceedings thereon was a regularly elected and qualified member of that body; that the speaker of the house of delegates appointed as the committee provided for in said resolution, Mr. James A. Sea-

14 man, of the county of Jackson; Mr. Haymond Maxwell, of the county of Harrison; and Mr. John A. Preston, of the county of Greenbrier; all three of whom were then and are now members of the house of delegates—one of the two branches composing the legislative department of the State government. And I further certify that on the date of the adoption of said preambles and resolution the legislature of this State was in regular biennial session in the city of Charleston, having begun said session (of forty-five days) on the 11th day of January, 1905—being the second Wednesday in said month.

All of which appear from the records on file in my office, and of which records I am the keeper.

Witness my hand, at the city of Charleston the seal of government, this the 17th day of April, A. D. 1905.

HARRY SHAW,
Clerk of House of Delegates and Keeper of the Rolls,
By J. B. PEYTON,
Ass't Clerk.

STATE OF WEST VIRGINIA, *ss:*

I, C. W. Swisher, secretary of state of said State, hereby certify that Harry Shaw, whose name is signed to the above certified copy of a part of the proceedings of the house of delegates of February 24, 1905, was on that date and is now the clerk of the house of delegates duly elected and qualified as such and authorized under the laws of the State to make certified transcripts from said proceedings.

Given under my hand and the less seal of said State, at the city of Charleston, this 18th day of April, 1905.

[SEAL.] C. W. SWISHER,
Secretary of State.

EXHIBIT NO. 2 WITH ANSWER.

State of West Virginia to the sheriff of Wood county, Greeting:

15 Whereas, the house of delegates of the State of West Virginia, at the regular session of the legislature, did on the 24th day of February, 1905, adopt the following preamble and resolution, to-wit:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable, and select one of its members chairman, and has leave to sit after adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one, whereby the fees and emoluments of the office of secretary of state, were to be divided or shared with him in any way, manner or form, either directly to himself, or indirectly through any other person, firm or corporation; and whether Governor Albert B. White did ever in fact in any way, manner or form, receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax, on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses, and to send for persons and papers to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary, to conduct such investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature.

Such compensation and mileage and other expenses of the
16 committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates, on the certificate of the chairman of the committee.

And, whereas, the Honorable Fred Paul Grosscup, speaker of said house of delegates, by authority and in pursuance of said resolution, did on the said 24th day of February, 1905, appoint as such committee, John A. Preston, Haymond Maxwell and James A. Seaman, members of the house of delegates, to ascertain and report the matters in said resolution specified, and

Whereas, the said John A. Preston, Haymond Maxwell and James A. Seaman, as such committee, under and by virtue of such resolution and appointment, did on the 2nd day of March, 1905, meet at the capitol, at the city of Charleston, and did then and there organize by electing James A. Seaman chairman of such committee, and did then and there appoint F. A. McGrew sergeant-at-arms of such committee. And at a subsequent meeting of such committee on the 28th day of March, 1905, at the said capitol, in the city of Charleston, it was ordered that C. T. Caldwell and Reese Blizzard be summoned to appear before the said committee at the State capitol, in the city of Charleston, West Virginia, on Friday, the 31st day of March, 1905, at ten o'clock a. m., to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of.

You, the said sheriff of Wood county, are hereby commanded in the name of the State of West Virginia, to summon the aforesaid C. T. Caldwell and Reese Blizzard to appear and be before said committee at the State capitol in the said city of Charleston, on the 31st day of March, 1905, at ten o'clock a. m., to give evidence before said committee on the matters aforesaid, and have then and there this writ.

Given under my hand as chairman of said committee, at the said city of Charleston, this 28th day of March, 1905, and of the State the 42d year.

JAMES A. SEAMAN,
Chairman of said Committee.

17 (Return endorsed :)

Executed M'ch 28th, 1905, by delivering a copy of the within writ in person to C. T. Caldwell and Reese Blizzard, in Wood Co., W. Va.

W. H. CARFER, S. W. C.

EXHIBIT NO. 3 WITH ANSWER.

18 State of West Virginia to the sheriff of Wood county, Greeting:

Whereas, the house of delegates, at the regular session thereof, did on the 24th day of February, 1905, adopt a preamble and resolution in words and figures following, to-wit:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable, and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White, had or has any agreement, understanding, or contract with any one whereby the fees and emoluments of the office of secretary of state were to be shared with him, in any way, manner or form, either directly to himself or indirectly, through any other person, form or corporation; and whether Governor Albert B. White, did ever in fact, in any way, manner or form, receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses, and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct such investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such com-

19 pensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates, on the certificate of the chairman of the committee, and

Whereas, the Honorable Fred Paul Grosscup, speaker of the said house of delegates, by authority and in pursuance of said resolutions, did on the said 24th day of February, 1905, appoint as such committee John A. Preston, Haymond Maxwell and James A. Seaman, members of said house of delegates, to ascertain and report on the matters in the said resolution specified; and whereas, the said John A. Preston, Haymond Maxwell and James A. Seaman as such committee, by authority of such resolution and appointment, did on the 2nd day of March, 1905, meet at the State capitol building, in the

city of Charleston, and did then and there organize said committee by electing James A. Seaman, a member of said committee, as chairman thereof, and

Whereas, at a subsequent meeting of said committee, to-wit, on the 28th day of March, 1905, it was then and there ordered that C. T. Caldwell and Reese Blizzard, gentlemen, be summoned to appear and be before said committee at the State capitol in the city of Charleston, West Virginia, on the 31st day of March, 1905, to give evidence before said committee touching the matters and things in the said resolution set forth, and thereupon the said James A. Seaman, chairman of said committee, in pursuance of said order, did on the said 28th day of March, 1905, issue such summons, directed to the sheriff of Wood county, commanding him to summon the said C. T. Caldwell and Reese Blizzard to appear and be before the said committee at the time and place last aforesaid, to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of; and it appearing that said summons was duly served upon the said C. T. Caldwell and Reese Blizzard, and each of them, on the 28th day of March, 1905, in the county of Wood and State aforesaid, as is shown by the return of said sheriff, endorsed thereon, in the words and figures following, to-wit:

"Executed March 28th, 1905, by delivering a copy of the within writ in person to C. T. Caldwell and Reese Blizzard, in Wood county, West Virginia.

W. H. CARFER, S. W. C."

And the said C. T. Caldwell and Reese Blizzard, and each of them, having failed and refused to attend and be before the said committee at the time and place aforesaid, in obedience to said summons,

These are therefore to command you, the said sheriff of Wood county, in the name of the State of West Virginia, to forthwith attach and take into your custody the bodies of said C. T. Caldwell and Reese Blizzard, and each of them, and have them before the said committee at the State capitol, in the city of Charleston, in the State of West Virginia, to answer said committee of a contempt in failing to attend and testify before said committee as aforesaid, and to be further dealt with according to law, and have then and there this writ.

Given under my hand as chairman of said committee, at the city of Charleston, in the State of West Virginia, this the 31st day of March, 1905, and of the State the 42nd year.

JAMES A. SEAMAN,
Chairman of said Committee.

EXHIBIT NO. 4 WITH ANSWER.

CHARLESTON, WEST VIRGINIA, March 2, 1905.

The committee of investigation appointed by the speaker of the house of delegates on Friday, February 24th, 1905, pursuant to a resolution adopted by said body on said date, met in the capitol building in the private room of the speaker of the house, on Thursday, March 2nd, 1905.

Present: Messrs. Seaman, Preston and Maxwell.

The committee organized by selecting Mr. Preston temporary chairman.

The resolution in pursuance of which the committee was
21 appointed was read by Mr. Maxwell.

The resolution is as follows:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable, and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one whereby the fees and emoluments of the office of secretary of state were to be divided or shared with him in any way, manner or form, either directly to himself, or indirectly through any other person, firm or corporation; and whether Governor Albert B. White did ever in fact in any way, manner or form receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" corporations.

Said committee is hereby empowered to compel the attendance of witnesses, and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct such investigation. Members of the committee shall receive the same compensation and mileage as are paid to the members of the legislature. Such compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates, on the certificate of the chairman of
22 the committee.

On motion of Mr. Maxwell, Mr. Seaman was elected permanent chairman.

By unanimous vote of the committee it was ordered that effort be made to secure the services of the following named persons in the capacities as follows:

Attorney to assist in conducting the investigation, Hon. W. A. McCorkle.

Sergeant-at-arms, for the committee, F. A. McGrew.

Stenographer for the committee, W. B. Parkhurst.

The committee then adjourned to meet at the same place on Tuesday, March 14, 1905.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 14, 1905.

The committee met pursuant to adjournment of March 14, 1904.

Present: Messrs. Seaman, Preston and Maxwell.

The chairman of the committee announced that the services of the persons named in the first day's proceedings of the committee had been secured.

Information was received from Hon. W. A. McCorkle who had been selected as counsel for the committee that it was impossible for him to be present on this day, and the committee, on motion, adjourned until ten o'clock to-morrow morning.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 15, 1905.

The committee met at ten o'clock a. m., pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell, members of the committee, and George W. McClintic, Esq., counsel for Governor A. B. White.

In the absence of Hon. W. A. McCorkle, counsel, the committee took a recess until this afternoon at three o'clock.

3:00 O'CLOCK P. M.

23 The committee met at the expiration of the recess.

Present: All the members of the committee, Hon. W. A. McCorkle and George W. McClintic, Esq.

Summons were issued, directing the sergeant-at-arms to summon Reese Blizzard, C. T. Caldwell and C. D. Elliott to appear before the committee on Saturday, March 18, 1905, at ten o'clock a. m.

On motion the committee adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 16, 1905.

The committee met pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell.

There being no witnesses present, the committee, on motion adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 17, 1905.

The committee met pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell.

There being no witnesses present, the committee, on motion, adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 18, 1905.

The committee met pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell, and counsel.

There being no witnesses present, the committee, on motion, adjourned until Monday, March 20, 1905, at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 20, 1905.

The committee met pursuant to adjournment of Saturday.

Present: Messrs. Seaman, Preston and Maxwell and counsel.

C. D. Elliott appearing, pursuant to summons, his evidence was taken and reduced to writing. (See appendix.)

24 Ordered that summons be issued for W. E. R. Byrne, W. M. O. Dawson, E. K. Reedy, J. M. Mathews, John Baker White and E. L. Boggs, returnable March 28, 1905, at ten o'clock a. m.

There being no other witnesses present, on motion the committee adjourned until March 28, 1905, at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 28, 1905.

The committee met pursuant to adjournment of March 20, 1905.

Present: Messrs. Seaman, Maxwell and Preston and counsel.

The following persons being present were examined by the committee and counsel and their testimony reduced to writing: E. L. Boggs, John Baker White and J. M. Mathews. (See appendix.)

Reese Blizzard and C. T. Caldwell having failed to appear in obedience to a former summons, it was ordered that they again be summoned to appear before the committee on the 31st day of March, 1905, and that the summons be directed to the sheriff of Wood county, West Virginia.

There being no further business before the committee, it adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 29, 1905.

The committee met pursuant to adjournment of yesterday.

Present: Messrs. Seaman, Preston and Maxwell.

There being no witnesses present, the committee, on motion, adjourned until tomorrow morning at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., March 30, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
There being no witnesses present, the committee, on motion, adjourned until tomorrow morning at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

25 CHARLESTON, W. VA., March 31, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
The summons issued by the committee on March 28, 1905, directed to the sheriff of Wood county, West Virginia, for Reese Blizzard and C. T. Caldwell was this day returned with the following endorsement thereon, towit:

"Executed March 28th, 1905, by delivering a copy of the within writ in person to C. T. Caldwell and Reese Blizzard, in Wood Co. W. Va.

W. H. CARFER, S. W. C."

Reese Blizzard and C. T. Caldwell having failed to appear before the committee in obedience to said summons it is ordered that an attachment do issue against said Blizzard and Caldwell and each of them, for their contempt in failing to appear before said committee, in obedience to said summons of March 28th, directed to the sheriff of Wood county, West Virginia, and returnable forthwith.
It was also ordered that summons be issued for H. C. Woodyard, directed to the sheriff of Roane county, West Virginia, returnable April 4th, 1905.
The committee adjourned until tomorrow morning at ten o'clock.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 1, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
There being no witnesses present, the committee, on motion, adjourned until Monday, April 3, 1905, at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 3, 1905.

The committee met pursuant to adjournment of Saturday, April 1, 1905.
Present: Messrs. Seaman, Preston and Maxwell.
There being no witnesses present, the committee, on motion,
26 adjourned until tomorrow morning at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 4, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
The summons issued March 31, 1905, for H. C. Woodyard was *this day returned with the following endorsement thereon, to-wit:*

"Served the within writ on the within named H. C. Woodyard on the 3d day of April, 1905, by delivering to his wife Emma Woodyard a copy thereof at his usual place of abode in said county and explained to her the purport thereof, the said H. C. Woodyard not found.

H. F. GOFF,
Sheriff Roane Co."

The committee then on motion adjourned until tomorrow at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 5, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
There being no witnesses present, on motion the committee adjourned until tomorrow at ten o'clock a. m.

JAMES A. SEAMAN, Chairman.

CHARLESTON, W. VA., April 6, 1905.

The committee met pursuant to adjournment of yesterday.
Present: Messrs. Seaman, Preston and Maxwell.
It is ordered that the chairman certify to the auditor, to be paid out of the contingent fund of the house of delegates, the following sums to the following persons:

To James A. Seaman $72.00 per diem and $21.20 mileage.
To John A. Preston $72.00 per diem and $27.00 mileage.
To Haymond Maxwell $72.00 per diem and $43.40 mileage.
To F. A. McGrew $—— per diem and $—— for —— miles, mileage, and $5.50 for serving 11 processes.
27 To W. B. Parkhurst —— days per diem, $——.
To Southern Bell Telephone Co., $3.25.
To H. F. Goff, sheriff of Roane county for serving process $0.75.

The attachment for Reese Blizzard and C. T. Caldwell dated March 31, 1905, and directed to the sheriff of Wood county to be executed according to the command thereof and the said sheriff having informed the committee that the said Blizzard and Caldwell had sued out and obtained a writ of *habeas corpus* from the judge of the circuit court of the United States for the northern district of West Virginia, which said writ was and is made returnable before the United States courtat Clarksburg, West Virginia, on the 20th day of April, 1905; pending a decision of the matters arising on

said petition and writ of *habeas corpus*, on motion the committee adjourned to meet at the same place subject to the call of the chairman.

JAMES A. SEAMAN, Chairman.

Order Submitting Case.

And at the same day, to-wit: on the 24th day of May, 1905, the following order was made and entered of record, to-wit:

In re C. T. CALDWELL. Upon a Writ of *Habeas Corpus*.

This day came the defendant, C. T. Caldwell, and the matters of law arising upon the writ of *habeas corpus* heretofore issued in this cause, and the return of the sheriff of Wood county thereon, were argued by counsel, and leave given to either party to file briefs in the case, and the court takes time to consider thereof.

Order Discharging Prisoner.

In re C. T. CALDWELL. Upon *Habeas Corpus*.

This cause came on this day to be again heard upon the petition of C. T. Caldwell, the return of W. H. Carfer, sheriff of Wood
28 county, exhibits filed with said petition and with said return, former orders entered in this cause, and was argued by counsel.

On consideration of all which the court is of opinion and doth adjudge, for reasons set forth in a written opinion now here filed, that the said C. T. Caldwell is held in custody by the said W. H. Carfer without due and lawful authority.

It is therefore ordered that said C. T. Caldwell be, and is hereby, discharged from the custody of the said W. H. Carfer, sheriff as aforesaid.

Opinion.

29 Article 1, sec. 9 of the Constitution of the United States provides that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." This provision is not a grant of power to the Federal courts but a prohibition against its suspension by Congress or the Executive. The right existing in Federal courts to issue the writ is purely a statutory one conferred by sections 716, 751, 758 and 753 of the Revised Statutes.

The supreme court and the circuit and district courts shall have power to issue writs of *habeas corpus*.

SECTION 752. The several justices and judges of the said courts within their respective jurisdictions, shall have power to grant writs

of *habeas corpus* for the purpose of an inquiry into the cause of re straint of liberty.

SECTION 753. The writ of *habeas corpus* shall in no case extend to a prisoner in jail, unless he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof, or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof, *or is in custody in violation of the Constitution or of a law or treaty of the United States*, &c.

It will thus be seen that the *power* of Federal courts to issue this writ is co-extensive with the common law power provided only that it be not used for deliverance of a prisoner in jail, except in the cases specified. This Federal jurisdiction, when assumed, is paramount. These sections of the Revised Statutes authorizing the issuance of the writ, are the supreme law of the land and a judgment of acquittal thereunder by the Federal courts will protect the relator from molestation or prosecution elsewhere.

Kelley *v.* State, 68 Fed., 652.

The writ may issue to inquire into the cause of commitment under a civil process as well as a criminal one.

30 *Ex-parte* Randolph Fed. case No. 11,558.

Chief Justice Waite, in *Ex-parte* Tom Tong, 108 U. S. 556, says: "The writ of *habeas corpus* is the remedy which the law gives for the enforcement of the civil right of personal liberty. Resort to it sometimes becomes necessary because of what is done to enforce laws for punishment of crime; but the judicial proceeding under it is not to inquire into the criminal act which is complained of, but into the right of liberty notwithstanding the act. Proceedings to enforce civil right are civil proceedings, and proceedings for the punishment of crime are criminal proceedings." The exercise of this power by Federal courts to release citizens from unlawful restraint imposed by inferior Federal tribunals or authority is accompanied with no embarrassment or difficulty. It seems to us such exercise is not only a right but a duty, always bearing in mind that the writ shall in no case be allowed to become a substitute for a writ of error or appeal. Its plain and simple scope in such cases is to restore to his liberty a person held under void authority. Mr. Black in his exhaustive note to *In re* Huse, 25 C. C. A. 1, has well said: "A writ of *habeas corpus* cannot be used as a substitute for an appeal or a writ of error. It cannot be made the means of procuring in a higher court, a review of the judgment of a lower court in respect to alleged errors, either of law or fact, or mere irregularities, occurring in the course of a criminal trial. Since it is in the nature of a collateral attack upon the judgment, the inquiry is limited to the question whether the trial court has acted without jurisdiction, or has exceeded its jurisdiction, so as to render the sentence void." Citing numerous authorities.

The exercise of this power in behalf of Federal officers prosecuted illegally by State courts has also become a well determined one, having been exercised to the fullest limit in the famous case of *In re* Neagle, 39 Fed. 833, 135 U. S. 1, where a U. S. marshal being
31 tried by a State court for homicide committed in defense of the life and person of a justice of the Supreme Court was released.

The power of Federal courts to release by *habeas corpus* a person held in State custody contrary to Federal Constitution or laws is unquestioned, but the exercise of this power is accompanied with very great embarrassment and should be so exercised with sound discretion and great caution. *In re* Huse, 79 Fed. 305, S. C., 25 C. C. A., 1, *In re* Jordan, 40 Fed. 238. *Ex-parte* Royall, 117 U. S. 241. *Ex-parte* Fonda, 117 U. S. 516. Cook *v.* Hart, 146 U. S. 183. In this latter case Mr. *Justice Brown says:* "Where a person is in custody under process from a State court of original jurisdiction for an alleged offense against the laws of that State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the circuit court of the United States has a discretion whether it will discharge him in advance of his trial in the court in which he is indicted, although this discretion will be subordinated to any special circumstances requiring immediate action. While the Federal courts have the power and may discharge the accused in advance of his trial if he is restrained of his liberty in violation of the Federal Constitution or laws, they are not bound to exercise such power even after a State court has finally acted upon the case, but may, in their discretion require the accused to sue out his writ of error from the highest court of the State, or even from the Supreme Court of the United States." See also New York *v.* Eno, 155 U. S., 89; *In re* Chapman, 156 U. S., 211; Whitten *v.* Tomilson, 160 U. S. 231.

The reasons why Federal courts should exercise this power with caution and only in extraordinary cases, where it effects the control of the State courts, are clear and cogent. They spring from the peculiar relations existing between the two authorities, from the mutual comity and forbearance which ought to exist between them
32 and to avoid all strife and conflict that may arise on account of their concurrent jurisdiction, having the same purpose and duty to perform, that to administer justice "agreeable to the usage and principles of law."

Under these principles and limitations we come, therefore, at once in this case to the first important question, whether the facts are of such character as to warrant, in its sound discretion, the intervention of this court. Briefly states, here is a citizen of the United States, resident within the jurisdiction of this court, who says that he is deprived of his liberty, not by "due process of law," not by any court of competent jurisdiction, State or Federal, but by a pretended writ of attachment and arrest issued by another citizen claiming to be chairman of a committee, constituted by a single house of the legis-

lative branch of the State, sitting without power or authority, after the power of such house itself by reason of its adjournment, under the constitution of the State, had ceased or was in abeyance, seeking to investigate, and to require him to testify touching matters that the legislature could not itself or through any committee constituted by it inquire into, but which matters were peculiarly within the province of the judicial power of the State under its well ordered criminal laws to examine and decide upon.

If these things be true, is it not such an extraordinary condition of affairs, as would warrant the intervention of the first court, State or Federal, applied to? Need there be any hesitation about acting because of forbearance due the State courts when their action is not only not involved, but their authority is actually usurped by another and distinct department of government contrary to the express inhibition of the State constitution under which both of them must act?

33 Is not the "free doom" of every citizen under the law as dear and as precious to the American today as it was to the Saxon of old? Is his enjoyment of it to be jeopardized for a day by the unwarranted and vexatious action of private citizens acting under a wholly unwarranted and usurped power, not of a judicial but of a legislative body?

We think there can be but one answer. If these allegations be true it is not only the exercise of a sound discretion but an imperative duty for this court thus appealed to, to intervene for both the protection of the citizens' right, and the maintenance of the power and jurisdiction of the judiciary, Federal and State, to enforce, as constitutionally required of it, without interruption, the laws which it is the sole power of the legislative branch of government to enact.

Therefore, the matter resolves itself finally into an examination of whether these allegations are true or not. *In re* Jordon, 49 Fed. 238, speaking of the duty of Federal courts touching their exercise of the power to issue these writs in behalf of persons under State authority, an investigation of the questions raised, where practicable, is not only authorized but urged, before issuing the writ. We have before us the petition and the return of the arresting officer. Besides these this court, like any other court within the jurisdiction of this State, has right to take judicial notice of the journal of the house of delegates of the State, so far as pertinent, From these it appears clearly: On February 24th, 1905, within three hours of midnight when the regular session of the legislature, by constitutional limitations was to expire, Albert B. White, then governor of the State, but whose term of office by like constitutional limitation was to expire nine days thereafter, sent to the house of delegates this message:

To the honorable the speaker and members of the house of delegates:

34 A few days ago certain charges were made against me by a member of the State senate, and printed broadcast in the news-

papers. These charges were that (1) I had an agreement, understanding or contract whereby the fees or emoluments or both, received by the secretary of state, whom I appointed, were divided with me, or applied, appropriated or paid in some manner to my use and benefit, directly or indirectly, and (2) that I was concerned in an improper manner in the proposed reduction of the license tax on charters of "non-resident" domestic corporations. In the State senate a committee was raised to investigate these charges. I and others appeared before the committee and made statements. It is understood that the committee will take no further testimony. I feel that the grave charges made against me have not been duly investigated, especially as there are rumors in circulation that there is evidence of the truthfulness of these charges, or one of them, which evidence was not presented but withheld under some sort of alleged agreement or understanding; and this has been stated in some newspapers. The house of delegates has the sole power of impeachment under our constitution. If I am guilty of these charges, or either of them, I ought to be found guilty and punished, either by impeachment, or on indictment and trial in court. If I am innocent, as I declare I am, I have the right to have that fact declared after a full, free and thorough investigation, and my good name and that of my family vindicated. Besides, I submit that the honor of the State, whose chief officer I am, demands that these charges be promptly and thoroughly inquired into, and their truthfulness established.

I therefore earnestly request that your honorable body will raise a committee to investigate these charges, and also whether I have been or am to be, in any way whatsoever, the receipient, directly or indirectly, of any of the fees or emoluments of the secretary of state or of any other officer or person appointed by me; and that such committee be empowered to sit after the adjournment of the legislature be given full power to compel the attendance of witnesses, and to send for persons and papers and be instructed to make full and thorough investigation, and when it has completed the same and made its report to file a transcript of the evidence taken before it and its report with the governor, to be by him laid before the next session of the legislature, special or regular; and that in the meantime their findings be made public.

Respectfully, ALBERT B. WHITE.

Executive chamber, Charleston, W. Va., February 24th, 1905.

One hour later Mr. Seaman, a member, submitted to the house the following:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as

such committee of investigation. Such committee will meet as soon as practicable and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one whereby the fees and emoluments of the office of secretary of state were to be divided or shared with him in any way, manner or form, directly or indirectly, either directly to himself, or indirectly through any other person, firm or corporation; and whether Governor Albert
36 B. White did ever in fact in any way, manner or form, receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of "non-resident" domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct said investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates on the certificate of the chairman of the committee.

Which was immediately adopted and the speaker appointed Mr. Seaman, Mr. Maxwell (of Harrison) and Mr. Preston such committee. This committee it seems organized, electing Mr. Seaman as chairman and proceeded with the investigation. Among other-, the relator was summoned as witness for a specified date, failed to attend, was again summoned for another day and failed and refused to attend, whereupon an order of attachment and arrest was issued against him, signed by Seaman as chairman of this committee directed to Sheriff —— Carfer of Wood county, who duly took him into custody from which he is seeking hereby to be discharged.

Art. 5 of the constitution of West Virginia in a single section provides:

The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the power properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature.

The 50 sections of art. 6, among other things, provide that the legislative power shall be vested in the senate and house of
37 delegates, fixes the number of each of these bodies, the term of office and the qualifications required of members, that the legislature shall meet at the seat of government "biennially and not oftener" unless convened by the governor in special session

under limitations set forth; that no session shall continue longer than forty-five days without concurrence of two-thirds of the members elected to each house and neither house, during a session, shall adjourn for more than three days without consent of the other; that a majority of the members elected to each house shall constitute a quorum; that attendance may be compelled; that each shall judge of the election returns and qualifications of its members, elect its presiding officers, appoint its officers and remove them at pleasure, punish its own members for disorderly conduct and by two-thirds vote expel once such member, then in section 26 it provides:

Each house shall have power to provide for its own safety, and the undisturbed transaction of its business, and may punish, by imprisonment, any person not a member, for disrespectful behavior in its presence; for obstructing any of its proceedings, or any of its officers in the discharge of his duties, or for any assault, threat or abuse of a member, for words spoken in debate. *But such imprisonment shall not extend beyond the termination of the session, and shall not prevent the punishment of any offense by the ordinary course of law.*

By section 45 of this article it is also further provided:—

It shall be the duty of the legislature, at its first session after the adoption of this constitution, to provide by law, for the punishment by imprisonment in the penitentiary, of any person who shall bribe, or attempt to bribe, any executive or judicial officer of this State, or any member of the legislature in order to influence him, in the performance of any of his official or public duties; and also to provide by law for the punishment by imprisonment in the penitentiary of any of said officers, or any member of the legislature, who shall demand, or receive, from any corporation, company or person, any money, testimonial or other valuable thing, for the performance of his official or public duties, or for refusing or failing to perform the same, or for any vote or influence a member of the legislature may give or withhold as such member.

Carrying out this constitutional requirement an act of the legislature of the State was approved April 1, 1873, (embodied in the Code of 1899, as section 5*a*, chap. 147) whereby it was made a felony for any one to bribe by directly or indirectly giving to or bestowing upon any executive or judicial officer or any member of the legislature, money, testimonial or thing of value, in order to influence him in the performance of any of his official or public duties, and also making it a felony for any executive or judicial officer to receive any money, testimonial or thing of value for such purpose, and further disqualifying any one convicted of either offense from ever holding any office of honor or trust in the State. The law prior to that time had been embodied in sections 4 and 5 of chapter 147 of the Code (*re*-enacted from sections 4 and 5 of chapter 194 of the Code of Virginia, 1860), which made these offenses misdemeanors of grave character.

Section 9 of article 4 of the constitution provides:

Any officer of the State may be impeached for mal-administra-

tion, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The house of delegates shall have the sole power of impeachment. The senate shall have the sole power to try impeachments, and no person shall be convicted without the concurrence of two-thirds of the members elected thereto. When sitting as a court of impeachment, the president of the supreme court of appeals, or, if for any cause it be improper for him to act, then any other judge of that court, to be designated by it, shall preside; and the senators shall be on oath or affirmation, to do justice according to law and evidence. *Judgment in cases of impeachment shall not extend further than to remove from office, and disqualification to hold any office of honor, trust or profit under the State; but the party convicted shall be liable to indictment, trial, judgment and punishment according to law. The senate may sit during the recess of the legislature, for the trial of impeachment.*

Section 7, chapter 12 of the Code provides:

When the senate or house of delegates, or a committee of either house, authorized to examine witnesses, or to send for persons and papers, shall order the attendance of any witness, or the production of any paper as evidence, a summons shall be issued accordingly, signed by the presiding officer or clerk of such house, or the chairman of said committee, directed to the sheriff or other proper officer of any county, or the sergeant-at-arms of such house, or any person deputed by him. And when served, obedience thereto may be enforced, by attachment, fine or imprisonment; at the discretion of the house which appointed the committee; and if the committee be authorized to sit during the recess of the legislature or the recess of the house which appointed the committee, then obedience to the summons may be enforced by said committee as aforesaid.

39 These constitutional and legislative provisions, we believe, are all that can be considered as involved in the determination of the questions before us.

At the very threshold it may be asked whether the limitations of the constitution were not intended to, and do, substantially prevent legislative investigations through committees during the recess of the body itself. Its provisions expressly limit the sessions to biennial ones, not to exceed a total of forty-five days each, only to be extended by concurrent vote of two-thirds of the members of both houses. It fixes, by sec. 33, art. 6, a *per diem* compensation with mileage allowance, and then distinctly provides that no other allowance or emolument shall directly or indirectly be made or paid to the members of either house for postage, stationery, newspapers, or *any other purpose whatever*. It makes express provision that the senate may sit during recess for the trial of impeachment cases. Thus it will be seen that not by direct prohibition but by strong negative limitations, the appointment of legislative committees to sit during recess is condemned. It would seem clear that the framers of this constitution contemplated that the legislative duties should be performed

by the legislative body itself within a fixed period and for a fixed per diem compensation.

The wisdom of such limitation is clear; for otherwise the tendency of the legislature to resolve itself into committees to investigate one after the other the public institutions and other matters that would furnish plausible excuse during recess, whereby they might extend and increase their own compensation to any number of days short of the total involved in the recess, is very apparent.

However, in our view of this case, we do not deem it necessary to decide finally this point which would necessarily involve the constitutionality of a part of section 7, chap. 12 of the Code, which we have hereinbefore cited. It can far more appropriately be
40 left for the State courts construing its own constitution in its own way and in its own time, to do this.

There is a more grave and crucial question involved, which, if we entertain this writ, must be decided by us, however, and that is, whether under the constitution of West Virginia, the house of delegates had the power to constitute this committee for the purpose of investigating the matters set forth in its resolution, clothing it with power to sit in vacation, compel attendance of witnesses and to arrest and punish recalcitrant ones.

It would seem from the reading of art. 5, cited above, that the framers of the constitution determined jealously to guard the very fundamental principle, adopted in the National and all the State governments, whereby governmental power is to be divided into the three great departments, the executive, the legislative and the judicial, by plain, explicit and separate article. Not only does it divide the power among these three grand departments, but it explicitly provides that neither of these departments shall exercise the powers properly belonging to either of the others, and then proceeds in other articles to define the limitations and powers of each.

If we analyze rightly, the real object of this legislative investigation, was to ascertain whether or not Albert B. White, as governor of the State, had received or was to receive from Wm. M. O. Dawson any sum of money, or any division of fees or any other thing of value, directly or indirectly for and in consideration of his appointment by White as governor, to the honorable and lucrative office of secretary of state. This appointment under the constitution at that time existing, being said White's official duty to make. The second charge is of the same character. The governor could not "improperly" be connected with legislative action such as to warrant legislative investigation unless it was such as to warrant impeachment or prosecution.

41 For what purpose was this investigation to be made? Can it be said that it was a preliminary investigation instituted by the house of delegates for the purpose of securing informations and facts upon which to base its impeachment of the governor? Certainly not for this resolution was passed within nine days of the expiration of the term of said White as such governor by operation

of law on March 4th, 1905. It was passed less than three hours before the adjournment of the session of the legislature by constitutional limitation. It expressly provided that the investigating committee was to sit in vacation and it was expected to make its report to the next succeeding session long after the said White's term would have expired, and after an impeachment proceeding could be instituted against him, for art. 4 of the State constitution, quoted by us above, expressly limits the extent of impeachment to removal from office. Was the purpose of this resolution to ascertain the guilt or innocence of White and Dawson touching this charge so that the legislature might enter judgment and punish one or both if found by this investigation to be guilty? Such an effort would be a palpable and gross assumption of power on its part unwarranted, yes, expressly prohibited, by the constitution. If these charges were and are true, then both White and Dawson are guilty of grave and serious felonies; if false then they are the victims of cruel and criminal slander or libel. In either event the only tribunals under the constitution where these things can be legally investigated are the courts of the State. It is the solemn duty of certain officers of the State, elected for the purpose, to bring such charges before the grand juries having jurisdiction and full power is vested in the courts to compel not only this relator but any and all other witnesses to appear there and testify.

If this investigation was to be made solely for the vindication of these gentlemen charged, or to soothe the outraged feelings
42 of either or both, it is simply enough to say that legislatures are not elected for this purpose, but the courts are here the proper forums wherein damages may be sought and awarded for all such injuries. It would be a very remarkable spectacle indeed for Congress and legislatures of the States to conduct investigations for vindication purposes, at the expense of the people, in every instance where, in the heat of partisan debate, some charge of misconduct, malfeasance or violation of law is made against a public official, and extend such vindicatory investigation to such officials after they have filled their terms of office and passed into private life.

That this latter was the sole and only purpose for the creation of this committee and for the authorization of this investigation does not depend upon inference and implication alone. On the contrary, it appears positively and without any doubt. It originated with and was solely instigated by the governor himself. Its origin sprung from his special message sent to the house of delegates in which he set forth that the charges had been made by a member of the senate and printed broadcast in the newspapers; that the senate had investigated them and he and others had testified; that *he* was not satisfied (it is clearly to be inferred that the senate was); he admits that "*if guilty of these charges, or either of them, he ought to be found guilty and punished, either by impeachment, or an indictment and trial in court.*" The former he knew to be impossible, under the circumstances; the latter he knew could not be subject of legislative

action. He then reaches the erroneous conclusion, the *non sequitur*, that if innocent, he "had the right to have that fact declared (by legislative action) after full, free and thorough investigation, (by a single branch of the legislature where the charge did not originate and after the other branch where it did originate had investi-
gated, but not to his liking or entire satisfaction), and his
43 good name and that of his family vindicated." Thereupon this branch of the legislature passed the resolution providing for this committee, expressly setting out in the preamble thereto the special message requesting the investigation and expressly instructing the committee to be appointed only to "investigate fully and thoroughly the charges." This then was the sole purpose for the creation of this committee, as clearly appears, and such appearing disposes of the argument of counsel based upon the theory that this investigation was authorized in order to furnish the legislature with facts upon which to base future legislation.

It is true generally as contended for, that all inferences are to be made and all doubts solved in favor of the legitimacy of the legislative purpose and action, but not when it expressly appears by the act itself in positive terms that its purpose is illegitimate and contrary to constitutional limitations.

The principles we have here set forth are involved to a considerable extent in the leading case of Kilbourn *v.* Thompson, 103 U. S., 377, where Mr. Justice Miller, with great learning has discussed and defined the powers of and limitations upon the national House of Representatives in making similar investigations, only authorized to be made by the courts.

Let the prisoner be discharged.

Petition for Appeal and Assignment of Error.

(Filed July 1, 1905.)

Circuit Court of the United States for the Northern District of West Virginia.

In the Matter of C. T. CALDWELL.

Petition for Appeal and Assignment of Error.

The respondent, W. H. Carfer, sheriff of Wood county, prays an appeal to the Supreme Court of the United States from the judgment discharging the petitioner, C. T. Caldwell, solely upon the
44 question of the jurisdiction of this court, as a court of the United States, and assigns as error, that this court is without jurisdiction, because it is not alleged, and does not appear, that the petitioner was in custody under or by virtue of any authority of the United States, or in violation of the Constitution or of any law or

treaty of the United States, or that the petition or judgment discharging the petitioner is founded upon any matter which justifies the exercise of Federal authority, or which is necessary to the enforcement of any right of the petitioner under the Constitution, laws or treaties of the United States; and the respondent prays that said question of jurisdiction of this court as a court of the United States, be certified to the Supreme Court of the United States.

W. H. CARFER,
Sheriff of Wood County.
W. E. CHILTON, Att'y.

Appeal Bond.

(Filed July 1, 1905.)

Know all men by these presents, that we, W. H. Carfer, as principal, and W. E. Chilton, as sure*ties*, are held and firmly bound unto C. T. Caldwell in the full and just sum of three hundred dollars (300.00) to be paid to the said C. T. Caldwell, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 1st day of July in the year of our Lord one thousand *eight* hundred and *ninety*-five.

Whereas, lately at a circuit court of the United States for the northern district of West Virginia, in a suit depending in said court, between C. T. Caldwell, petitioner, and W. H. Carfer, sheriff of Wood county, West Virginia, respondent, a decree was rendered against the said W. H. Carfer, sheriff of Wood county, West Virginia, and the —

W. H. Carfer, sheriff of Wood county, West Virginia, having
45 obtained an appeal to reverse the decree in the aforesaid suit, and a citation directed to the said C. T. Caldwell citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the day in the said citation mentioned:—

Now, the condition of the above obligation is such, that if the said W. H. Carfer, sheriff of Wood county, West Virginia, shall prosecute his appeals to effect, and answer all damages and costs if he fail to make his plea good, then *and* above obligation to be void; else to remain in full force and virtue.

W. H. CARFER. [SEAL.]
W. E. CHILTON. [SEAL.]

Sealed and delivered in presence of—
L. B. DELLICKER.

Approved by—
ALSTON G. DAYTON,
Judge U. S. Dist. Court,
Northern Dist. of West Va.

And at another day, to-wit: on the 1st day of July, 1905, the following order was made and entered of record, to-wit:

Order Allowing Appeal.

In the Matter of C. T. CALDWELL. *Habeas Corpus.*

Upon consideration of the petition of the respondent for an appeal to the Supreme Court of the United States, now here filed, it is hereby certified that the question of the jurisdiction of this court as a court of the United States, was raised by the respondent at the hearing and was in issue; the respondent claiming that the court was without jurisdiction because it was not alleged and did not appear that the petitioner was in custody under or by virtue of any authority of the United States, or in violation of the Constitution or of any law or treaty of the United States, or that his petition was founded upon any matter which justified the exercise of Federal authority; and
46 said objection of the respondent to the jurisdiction of this court was overruled, and the petitioner was discharged for the reasons set forth in the written opinion filed herein; and the court hereby allows an appeal to the Supreme Court of the United States, solely upon said question of the jurisdiction of this court as a court of the United States to issue said writ and discharge the petitioner, upon the respondent giving bone in the sum of three hundred dollars, ($300.00) and said question of jurisdiction is hereby certified to the Supreme Court, and pending this appeal for special reasons shown the court, the said C. T. Caldwell is enlarged upon his own recognizance.

Citation.

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States to C. T. Caldwell, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States holden at Washington on the 31st July next, pursuant to an appeal from a decree of the circuit court of the United States for the northern district of West Virginia in your favor passed in a cause in said court wherein C. T. Caldwell was petitioner and W. H. Carfer sheriff of Wood county West Virginia respondent and you are required to show cause, if any there be, why the judgment rendered against the said W. H. Carfer sheriff &c. in said cause mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller Chief Justice of the said Supreme Court of the United States this 1st day of July, in the year of our Lord one thousand nine hundred five.

{Seal Circuit Court United States, Northern District West Virginia, Parkersburg, West Va.}

ALSTON G. DAYTON,
Judge U. S. Dist. Court, Northern Dist. of West Va.

47½ On this 10th day of July, in the year of our Lord one thousand nine hundred and five, personally appeared L. V. G. Morris before me, the subscriber, and makes oath that he delivered a true copy of the within citation to C. T. Caldwell, at his office in the city of Parkersburg, West Virginia, on the 10th day of July, 1905.

L. V. G. MORRIS.

Sworn to and subscribed the 10th day of July, A. D. 1905.

{Seal of W. S. Allen, Notary Public, Wood County, West Virginia.}

W. S. ALLEN,
Notary Public for Wood Co., W. Va.

[Endorsed:] *In re* C. T. Caldwell. Citation.

48 UNITED STATES OF AMERICA, } ss:
Northern District of West Virginia, }

I, L. B. Dellicker, clerk of the circuit court of the United States for the northern district of West Virginia, hereby certify that the foregoing is a true and complete transcript of the record and proceedings of said court, *In re* C. T. Caldwell, upon petition for a writ of *habeas corpus*, lately pending therein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Parkersburg, in said district, this 10th day of July, 1905.

{Seal Circuit Court United States, Northern District West Virginia, Parkersburg, West Va.}

L. B. DELLICKER,
Clerk C. C. U. S., N. D. W. Va.

Endorsed on cover: File No. 19,862. N. West Virginia C. C. U. S. Term No. 360. W. H. Carfer, sheriff of Wood county, West Virginia, appellant, *vs.* C. T. Caldwell. Filed July 27th, 1905. File No. 19,862.

FILE COPY.

Office Supreme Court U. S.
FILED
SEP 16 1905
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 360.

W. H. CARPER, Sheriff of Wood County, West Virginia,
Appellant,
vs.
C. T. CALDWELL.

Appeal from the Circuit Court of the United States for the Northern District of West Virginia.

MOTION TO ADVANCE.

Printed by JAMES BARNAY, 108-110 Canal St., Strobridge Building, Cincinnati, Ohio.

Supreme Court of the United States.

OCTOBER TERM, 1905.

No. 360.

W. H. CARFER, Sheriff of Wood County, West Virginia,
Appellant,
vs.
C. T. CALDWELL.

Appeal from the Circuit Court of the United States for the Northern District of West Virginia.

MOTION TO ADVANCE.

The appellant moves that this appeal may be advanced and heard under rule 32. He has served notice of this motion, and of his brief of argument, on counsel for the appellee in accordance with the provisions of said rule.

The appeal is from an order of the circuit court discharging the appellee in a proceeding in habeas corpus. It is taken under section 5 of the act of March 3, 1891, chapter 517, and presents only the question of the jurisdiction of the circuit court, as a court of the United States, to issue the writ and discharge the appellee, which question is duly certified.

The appellant presents the following additional ground for advancing the case.

By the decision of the circuit court the appellee has been discharged from arrest under an order of attachment issued by a committee of the House of Delegates of West Virginia for contempt in refusing to appear before the committee and testify, and the proceedings of the committee have been brought to a standstill. By the resolution of the House appointing the committee they are required to report at the next session of the legislature. Unless the case is advanced, a decision can not be rendered in time to enable them to report.

Respectfully submitted,

WM. E. CHILTON,

LAWRENCE MAXWELL, JR.,

Counsel for Appellant.

FILE COPY.

Office Supreme Court U. S.
FILED
SEP 13 1905
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BRIEF FOR THE APPELLANT.

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No. 360.

W. H. CARFER, Sheriff of Wood County, West Virginia,
Appellant,
vs.
C. T. CALDWELL.

Appeal from the Circuit Court of the United States for the Northern District of West Virginia.

BRIEF FOR THE APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a final order of the circuit court in a proceeding in habeas corpus brought therein by the appellee Caldwell, discharging him from custody. The appeal is on the sole ground that the circuit court was without jurisdiction, as a court of the United States, to issue the writ or discharge the petitioner. The question of jurisdiction is duly certified (Rec. 31), in accordance with the practice approved in Shields vs. Coleman, 157 U. S. 168.

The case was heard in the circuit court on the petition for the writ, the return, and the exhibits attached to said pleadings (Rec. 19). They disclose the following facts.

On February 24, 1905, at the regular biennial session of the legislature of West Virginia, the House of Delegates duly passed a resolution instructing the speaker of the House to appoint a committee of three members "to investigate fully and thoroughly" certain charges and matters set forth in the resolution. The committee was directed by the resolution to meet as soon as practicable and select one of its members chairman and was given leave to sit after the adjournment of the session. The resolution empowered the committee "to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct said investigation." A copy of the resolution and a certificate of the appointment of the committee by the speaker is attached to the return. Rec. 8.

The committee organized and duly summoned the appellee Caldwell to appear before them "to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of." Rec. 11. He refused to appear and was taken into custody by the appellant, the sheriff of Wood County, in pursuance of an order of attachment issued by the committee to bring him before them to answer for his contempt in failing to attend and testify. Rec. 13. He was taken from the custody of the sheriff by the writ of habeas corpus in this case and discharged.

The petition for the writ did not allege and the court in discharging the petitioner did not find that he was held in violation of the Constitution or of any law or treaty of the United States. Nothing appeared to justify the exercise of federal authority, but the objection made on that ground to the jurisdiction of the court, as a court of the United States,

was overruled, and the petitioner discharged, because the circuit court was of opinion that the house of delegates had no power *under the Constitution of West Virginia*, to appoint a committee for the purpose of investigating the matters set forth in its resolution and to clothe it with power to sit and compel the attendance of witnesses in vacation. Opinion, Rec. 27. The objection that this view of the limitations imposed by the Constitution of West Virginia, if correct, did not justify a *federal* court in interfering, was answered by the statement of the court that the condition was so "extraordinary" as to "warrant the intervention of the first court, state or federal, applied to." Rec. 22. The full view of the court upon this point is set forth in the following passage from the opinion, Rec. 21, 22:

"Briefly stated, here is a citizen of the United States, resident within the jurisdiction of this court, who says that he is deprived of his liberty, not by 'due process of law,' not by any court of competent jurisdiction, State or Federal, but by a pretended writ of attachment and arrest issued by another citizen claiming to be chairman of a committee, constituted by a single house of the legislative branch of the state, sitting without power or authority, after the power of such house itself by reason of its adjournment, under the constitution of the State, had ceased or was in abeyance, seeking to investigate, and to require him to testify touching matters that the legislature could not itself or through any committee constituted by it inquire into, but which matters were peculiarly within the province of the judicial power of the State under its well ordered criminal laws to examine and decide upon.

If these things be true, is it not such an extraordinary condition of affairs, as would warrant the intervention of the first court, State or Federal, applied to? Need there be any hesitation about acting because of forbearance due the state courts when their action is not only not involved, but their authority is actually usurped by another and distinct department of government contrary to the express inhibition of the

state constitution under which both of them must act? Is not the 'free doom' of every citizen under the law as dear and as precious to the American to-day as it was to the Saxon of old? Is his enjoyment of it to be jeopardized for a day by the unwarranted and vexatious action of private citizens acting under a wholly unwarranted and usurped power, not of a judicial but of a legislative body?

We think there can be but one answer. If these allegations be true it is not only the exercise of a sound discretion but an imperative duty for this court thus appealed to, to intervene for both the protection of the citizens' right, and the maintenance of the power and jurisdiction of the judiciary, Federal and State, to enforce, as constitutionally required of it, without interruption, the laws which it is the sole power of the legislative branch of government to enact."

ARGUMENT.

I.

The federal courts have no authority to discharge a person held for contempt by a committee of the legislature of a state, acting in pursuance of a law of the state and a resolution passed by a branch of the legislature, on the ground that such law and resolution are repugnant to the Constitution of the State.

In In re Burrus, 136 U. S. 586, the jurisdiction of the federal courts to issue writs of habeas corpus was carefully considered upon principle and authority, and the conclusion of the court thus stated by Mr. Justice Miller, at page 591:

"It is sufficient to say that the net result of the discussion is, that all the courts of the United States, and the justices and judges of all its courts, are authorized to issue the writ of habeas corpus in any case where a party is imprisoned or held in custody for an act done by or under the authority of the laws of the United States, or where his imprisonment is in violation of the Constitution of the United States, or where it is supposed to be in violation of the law of nations or of the United States, in all which cases the federal courts and

judges have jurisdiction to make inquiry into the matter, and, in the language of the statute, when the prisoner is brought before them and the matter is inquired into, the court or justice or judge shall 'dispose of the party as law and justice require.' It is not now the law, therefore, and never was, that every person held in unlawful imprisonment has a right to invoke the aid of the courts of the United States for his release by the writ of habeas corpus. In order to obtain the benefit of this writ and to procure its being issued by the court or justice or judge who has a right to order its issue, it should be made to appear, upon the application for the writ, that it is founded upon some matter which justifies the exercise of federal authority, and which is necessary to the enforcement of rights under the Constitution, laws or treaties of the United States."

Burrus's case involved the jurisdiction of a district court of the United States over a proceeding in habeas corpus brought by the father of a child to recover its custody from its grandfather, Burrus. Burrus was imprisoned by the district court for refusing to obey an order directing him to deliver the child to the father. This court discharged him on habeas corpus, holding that the district court was without jurisdiction, Mr. Justice Miller saying at page 593:

"In the case before us there was no pretence that the child was restrained of its liberty, or that the grandfather withheld it from the possession and control of the father, under or by virtue of any authority of the United States, or that his possession of the child was in violation of the Constitution or any law or treaty of the United States. The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States. As to the right to the control and possession of this child, as it is contested by its father and its grandfather, it is one in regard to which neither the Congress of the United States nor any authority of the United States has any special jurisdiction. Whether the one or the other is entitled to the possession does not depend upon any act of Congress, or any treaty of the United States or its Constitution."

In Andrews vs. Swartz, 156 U. S. 272, 275, Mr. Justice Harlan said:

"The repugnancy of a statute to the constitution of the State by whose legislature it was enacted can not authorize a writ of habeas corpus from a court of the United States, unless the petitioner is in custody by virtue of such statute, and unless also the statute is in conflict with the Constitution of the United States."

In Storti vs. Massachusetts, 183 U. S. 138, 142, Mr. Justice Brewer said:

"It must be borne in mind that under section 763 of Rev. Stat. the jurisdiction of the Federal court to issue a writ of habeas corpus is limited to 'the case of any person alleged to be restrained of his liberty in violation of the Constitution, or of any law or treaty of the United States,' and to cases arising under the laws of nations.

With these considerations in mind we pass to notice more particularly the matters set forth in the petition. It is stated that the petitioner was sentenced to be put to death at a given time; that he was not then put to death on account of a respite granted by the governor, and that such respite was unlawfully granted. Wherein the unlawfulness consisted is not stated, and whether it were lawful or not is a matter dependent on the laws of the State, and to be determined by its courts. The Federal Constitution neither grants nor forbids to the governor of a State the right to stay the execution of a sentence. So also it is said that under the Massachusetts statutes the party convicted has a year in which to file a motion for a new trial, and, therefore, no sentence can be executed on him until that time. Whether that be so or not is also a question depending on the statutes of the State, and to be determined by its courts. The State may see fit to postpone the execution of a capital sentence for a year, or provide that it shall be carried into effect more speedily, and what the State has provided in the matter is for its courts to decide."

The decision of the circuit court is based on the erroneous assumption that the power of the federal courts to issue writs

of habeas corpus "is co-extensive with the common law power provided only that it be not used for the deliverance of a prisoner in jail except in the cases specified in section 753 of the Revised Statutes of the United States," Opinion, Rec. 20.

II.

The circuit court was of opinion that the subject which the committee was appointed to investigate was not within the jurisdiction of the legislature, *as defined by article 5 of the constitution of West Virginia*, which declares that "the legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the power properly belonging to either of the others." But the committee was acting under a resolution duly passed by the House of Delegates, and in pursuance of a law of the State, giving power to committees of either house, authorized to sit during recess, to enforce obedience to summonses issued by them; and if they did not have the power which they assumed to exercise, it was because the resolution or law or both were repugnant to the Constitution of the *State*, and not because they were in conflict with the Constitution or any law or treaty of the United States.

In Dreyer vs. Illinois, 187 U. S. 71, 83, 84, Mr. Justice Harlan said:

"A local statute investing a collection of persons not of the judicial department, with powers that are judicial and authorizing them to exercise the pardoning power which alone belongs to the Governor of the State, presents no question under the Constitution of the United States. The right to the due process of law prescribed by the Fourteenth Amendment would not be infringed by a local statute of that character. Whether the legislative, executive and judicial powers of a State shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert

powers which, strictly speaking, pertain to another department of government, is for the determination of the State. And its determination one way or the other can not be an element in the inquiry whether the due process of law prescribed by the Fourteenth Amendment has been respected by the State or its representatives when dealing with matters involving life or liberty. 'When we speak,' said Story, 'of a separation of the three great departments of government, and maintain that that separation is indispensable to public liberty, we are to understand this maxim in a limited sense. It is not meant to affirm that they must be kept wholly and entirely separate and distinct, and have no common link of connection or dependence the one upon the other, in the slightest degree. The true meaning is, that the whole power of one of these departments should not be exercised by the same hands which possess the whole power of either of the other departments; and that such exercise of the whole would subvert the principles of a free constitution.' Story's Const. (5th ed.) 393. Again: 'Indeed, there is not a single constitution of any State in the Union, which does not practically embrace some acknowledgement of the maxim, and at the same time some admixture of powers constituting an exception to it.' Story's Const. (5th ed.) 395.

The objection that the act of 1899 confers upon executive or ministerial officers powers of a judicial nature does not, in our judgment, present any question under the due-process clause of the Fourteenth Amendment."

Dreyer vs. Illinois was approved in Reetz vs. Michigan, 188 U. S. 505.

In Kilbourn vs. Thompson, 103 U. S. 168, greatly relied on by the circuit court, the House of Representatives was held to have exceeded its authority under the Constitution of the United States, to which it owed its existence and from which it derived its powers. It was a case depending wholly and only upon the Federal Constitution.

There is nothing in the Constitution of the United States to prevent the State of West Virginia from conferring upon a committee of the House of Delegates the very power which

this committee assumed to exercise when they summoned Caldwell to appear before them and testify. Whether they had the power to make the proposed investigation and to require Caldwell to give evidence and to punish him for refusing to appear, depends wholly upon the construction of the resolution by which they were appointed, the validity of that resolution under the Constitution of West Virginia, and the construction and validity of the statute of the state authorizing them to punish for contempt, and not at all upon the Constitution or laws of the United States. There is no way in which Caldwell's case can be viewed that brings it within the domain of the federal law. It does not arise under the Constitution and laws of the United States. His petition for the writ asserts no ground under the Federal Constitution.

The following is the statute of West Virginia under which the committee acted in committing Caldwell for contempt. It was taken from a statute of Virginia, which remained in the Code of that State from 1819 until West Virginia was formed, being carried into the Code of 1868 of West Virginia, and put into its present form by the Acts of 1882, chapter 88. It is section 7 of chapter 12 of the present Code of West Virginia.

"When the senate or house of delegates, or a committee of either house, authorized to examine witnesses, or to send for persons and papers, shall order the attendance of any witness, or the production of any paper as evidence, a summons shall be issued accordingly, signed by the said presiding officer or clerk of such house, or the chairman of said committee, directed to the sheriff or other proper officer of any county, or to the sergeant-at-arms of such house, or any person deputed by him. And when served, obedience thereto may be enforced, by attachment, fine or imprisonment, at the discretion of the house which appointed the committee; and if the committee be authorized to sit during the recess of the legislature or the recess of the house which appointed the committee, then obedience to the summons may be enforced by said

committee as aforesaid. And when a committee is appointed by each house under any joint or concurrent resolution, and directed to sit jointly, with authority to examine witnesses or send for persons and papers, the summons aforesaid may be signed by the chairman of the committee on the part of the senate or the chairman of the committee on the part of the house of delegates; and obedience thereto may be enforced as aforesaid by the house which appointed the committee, which directed the summons to be issued; and if such committees be authorized to sit during the recess of the legislature, then obedience to the summons aforesaid may be enforced as aforesaid by the committee which directed the summons to be issued."

The following is the resolution of February 24, 1905, appointing the committee:

"Mr. Seaman submitted the following:

Whereas, his excellency, Governor Albert B. White, in a written communication of this date, has requested the house of delegates to make an investigation of certain charges made against him, as set out in his said communication, therefore,

Resolved, That the speaker of this house be and he is hereby instructed to appoint a committee of three members of the house as such committee of investigation. Such committee will meet as soon as practicable and select one of its members chairman, and has leave to sit after the adjournment of the present session, and is hereby instructed to investigate fully and thoroughly the charges and matters as follows:

First. Whether Governor Albert B. White had or has any agreement, understanding or contract with any one, whereby the fees and emoluments of the office of secretary of state were to be divided or shared with him in any way, manner or form, either directly to himself or indirectly through any other person, firm or corporation; and whether Governor Albert B. White did ever in fact in any way, manner or form receive any of the fees or emoluments of the office of secretary of state.

Second. Whether Governor Albert B. White was concerned in any improper manner in the proposed reduction of the license tax on the charters of 'non-resident' domestic corporations.

Said committee is hereby empowered to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant-at-arms, necessary stenographers and clerks, and to employ such counsel, as may be necessary to conduct said investigation. Members of the committee shall receive the same compensation and mileage as are paid to members of the legislature. Such compensation and mileage and other expenses of the committee shall be paid by the auditor out of the appropriation for contingent expenses of the house of delegates on the certificate of the chairman of the committee.

On motion of Mr. Seaman, reference of the resolution to a committee was dispensed with, and it was taken up for immediate consideration, and adopted.

Thereupon, the speaker appointed as the committee provided for in the resolution, Mr. Seaman, Mr. Maxwell (of Harrison), and Mr. Preston."

III.

The circuit court held that the chairman of the committee in issuing an order for Caldwell's arrest was a mere usurper, without any authority in law, but the court reached that conclusion only upon an examination of the Constitution of West Virginia. There is nothing in the Constitution of the United States on the subject. But the view that the chairman, although acting under color of authority of a statute of West Virginia, and of a resolution of its House of Delegates, was nevertheless a mere usurper without authority of law, and that Caldwell was deprived of his liberty "by a pretended writ of attachment and arrest issued by *another citizen* claiming to be Chairman of a Committee," as the Opinion puts it at page 21, adds nothing to the argument in favor of the jurisdiction of the circuit court. It is not alleged that the parties were citizens of different states. A circuit court of the United States has no jurisdiction to issue its writ of habeas corpus to release a citizen from imprisonment by "another citizen" of the same State, merely because the imprisonment is wrong-

ful. It must further appear that it is in violation of the Constitution or some law or treaty of the United States, or the law of nations.

IV.

Whether the legislature of West Virginia, or the House of Delegates, acting either directly or through a committee, sitting during the session or in recess, had power under the Constitution of the State, to investigate the matters covered by the resolution of February 24th, or whether those matters were beyond the province of the legislature as defined and limited by the Constitution of the State, we consider wholly immaterial to the question of the right of the Federal Courts to interfere, which is the sole question before this court. The courts of the State are the appropriate tribunals for the vindication of the Constitution and laws of the State. In controversies between citizens of the same State, the function of the courts of the United States is limited to the protection of rights secured by the Constitution and laws of the United States, or by the law of nations. We do not wish however by silence to seem to assent to the view of the circuit court that the legislature of West Virginia was without authority, under the Constitution of the State, to investigate the matters covered by the resolution of the House of Delegates.

It must be borne in mind that the purpose of the legislature in ordering the investigation is not necessarily limited to the purpose of Governor White in requesting it, as disclosed in his communication to the House. He may have desired an investigation for his personal vindication. The House may have directed it with a view to further legislative action. Every presumption is in favor of the action of the House.

At the time the resolution was passed the term of A. B. White as Governor of the State was about to expire, and he

was to be succeeded by W. M. O. Dawson, who had been Secretary of State for four years. The people had shortly before amended the Constitution of the State by increasing the salary of the Governor from $2,700 to $5,000, and the salary of the Secretary of State from $1,000 to $4,000, and requiring all fees of the office of the latter to be paid into the state treasury. At a special session held in 1904 the legislature had made radical changes in the laws relative to the assessment and collection of taxes and licenses and had created new offices and modified the duties of various officials. The investigation ordered by the House did not relate to the conduct of private individuals, but to the acts of public officials concerning public matters in which the State was vitally interested, and may have been deemed important to enable the legislature to take action upon any one or all of the following subjects.

1. The conduct of public officials with a view to preventing the practices referred to in the resolution;

2. The prevention and punishment of bribery;

3. The fees of public officials;

4. The prevention and punishment of lobbying by public officials;

5. Enlarging within the Constitution the statute concerning impeachments;

6. The fees to be paid by non-resident or other corporations;

7. The revenues of the state.

In People ex rel. McDonald vs. Keeler, 99 N. Y. 463, the Senate of New York adopted a resolution directing a committee to investigate the department of public works in the city of New York, with power to send for persons and papers and to report the result of such investigation, and its recommendations concerning the same to the Senate. A preamble recited that charges of fraud and irregularities had been made against a commissioner of public works, and that it was

of vital importance to the tax payers of the State that the heads of all public departments should be above reproach. In declining to release a witness attached by the Senate for contempt for refusing to appear before it, the Court of Appeals held that the terms of the resolution indicated that some legislative action was in contemplation to guard against frauds or irregularities, if they were found to exist, which could be prevented or rendered more difficult by legislation, and that it was to be presumed that the investigation was for that purpose. The court said at page 485:

"Where public institutions under the control of the State are ordered to be investigated, it is generally with the view of some legislative action respecting them, and the same may be said in respect to public officers."

And again at page 487:

"We are bound to presume that the action of the legislative body was with a legitimate object, if it is capable of being so construed, and we have no right to assume that the contrary was intended. The same principle which renders it the duty of the courts to hold legislative action illegal when it unduly encroaches upon the province of the judiciary, forbids interference by the latter with the action of legislative bodies or the exercise of their discretion in matters within the range of their constitutional powers."

And again at page 481:

"The power of obtaining information for the purpose of framing laws to meet supposed or apprehended evils is one which has from time immemorial been deemed necessary and has been exercised by legislative bodies."

We respectfully submit that the order of the circuit court should be reversed and the cause remanded with directions to dismiss the proceeding for want of jurisdiction, and to restore the appellee to the custody of the sheriff.

William E. Chilton,
Lawrence Maxwell, Jr.,
Counsel for Appellant.

FILE COPY.

Office Supreme Court U. S.
FILED
OCT 10 1905
JAMES H. McKENNEY,
Clerk.

No. 360

IN THE

Supreme Court of the United States

October Term 1905.

W. H. Carfer, Sheriff Of Wood County, West Virginia, Appellant.

vs.

Charles T. Caldwell.

UPON APPEAL AND WRIT OF ERROR FROM ORDER OF CIRCUIT COURT U. S. NORTHERN DISTRICT W. VA., ON HABEAS CORPUS.

APPEARANCE AND BRIEF OF DEFENDANT, CHARLES T. CALDWELL, WHO APPEARS IN PERSON TO ANSWER SAID MOTION TO BE MADE TO ADVANCE SAID CAUSE UNDER RULE 32 OF THE PRACTICE AND PROCEEDINGS BEFORE SAID COURT.

This defendant admits the right and power of this Court to advance this cause, under the provisions of Rule 32. But it is respectfully submitted that there should be some urgent reason for exercising the privilege granted under said Rule.

This case is based upon proceedings of one branch of the last extinct Legislature of West Virginia. Just before the adjournment of the Legislature the House of Delegates passed a resolution, (not a joint resolution to be concurred in by the Senate), authorizing the speaker of the said House of Delegates to appoint a committee of three to investigate charges preferred by the then Governor against himself.

The next Legislature will convene about the 15th of January, 1907, as West Virginia Legislatures meet biennially only. The last

Legislature unlike the Christians will never meet again (and I presume the people are thankful they will not).

A joint resolution of both Houses of the Legislature, when passed becomes a law, but the resolution of one branch or the other alone is not a law, and, inasmuch as there is no Legislature in West Virginia until the year 1907, there is no public demand or necessity for advancing on the trial docket in this Honorable Court the argument and submission of the present case.

The resistance of the motion to advance said cause on the docket is not for the purpose of delay, but for four distinct reasons:

1. Because there is no public demand for the speedy hearing of the case.

2. Because this Court will have ample time to hear this case as it arises regularly on the docket where it belongs before the convening of the next Legislature in West Virginia; ample time for the alleged committee to hear all the evidence it may desire or wish at $4.00 per day each, etc., providing it has lawful authority to do so.

3. Because this defendant, who is a practicing attorney in the various Courts, State and Federal, has made arrangements professionally which will prevent his speedy and proper preparation for his defense on the matters arising on the writ of error and appeal in this case, out of its regular order on the docket of this Honorable Court.

4. The term of office of the then Governor, who preferred charges against himself to the House of Delegates, expired within a few days after his self accusation, and he is now a very private citizen, and the probabilities are he will occupy his present distinguished position so long as the mind of man runneth not to the contrary, and he will thus become a permanent common law citizen.

For the foregoing and other reasons, not assigned for the want of space and time to enumerate them, we submit that the motion to advance said cause on the trial docket should be refused.

Respectfully submitted.

Chas. T. Caldwell

Appellee Pro Se

Counsel

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Office Supreme Court U. S.
FILED
JAN 6 1906
JAMES H. McKENNEY,
Clerk.

No. 19862.

Supreme Court of the United States

W. H. Carfer, Sheriff of Wood County, West Virginia, Appellant.

vs. Upon Proceedings in Habeas Corpus.

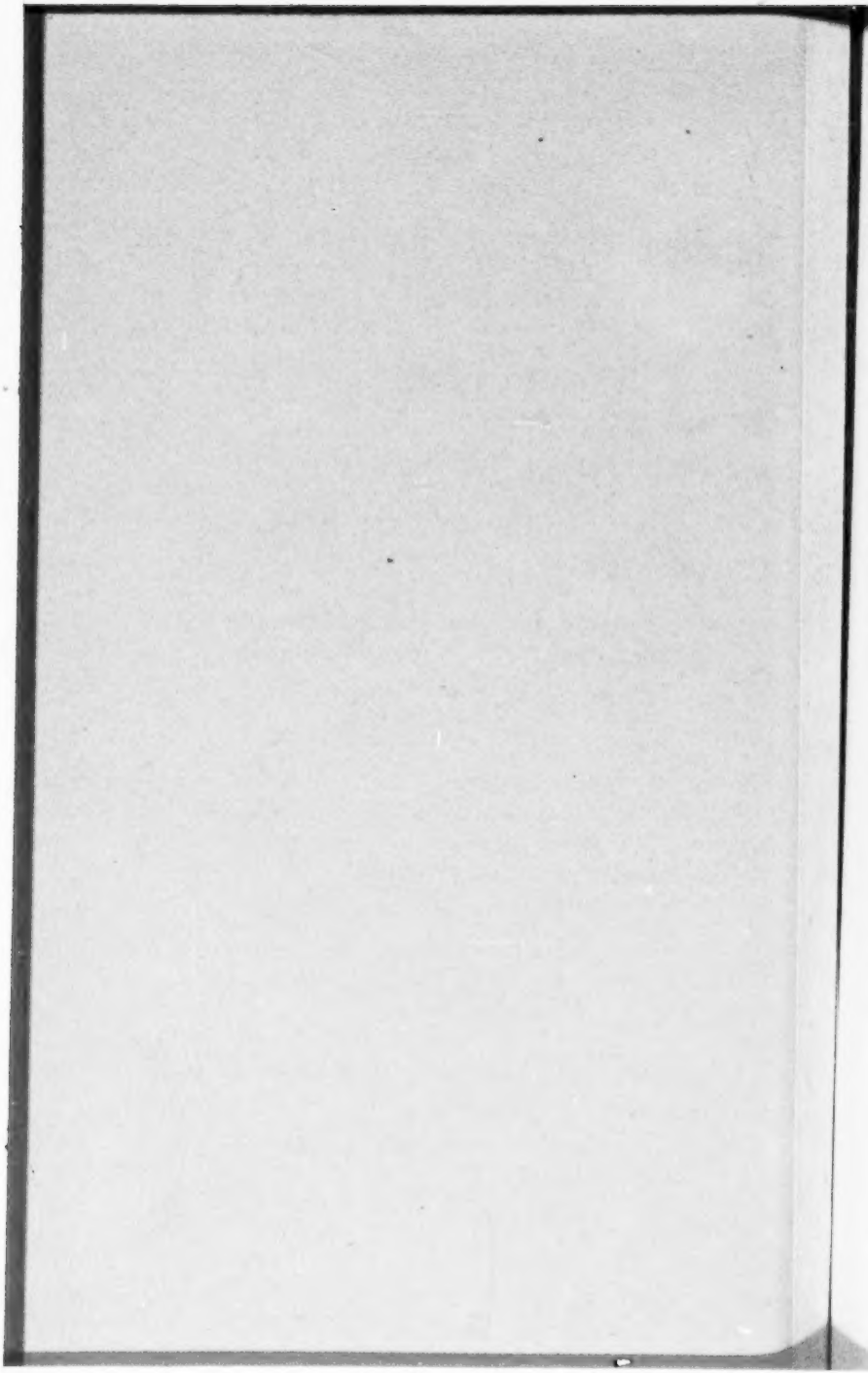
C. T. Caldwell, Appellee.

October Term 1905.

No. 360.

Appealed from the Circuit Court of the United States for the Northern District of West Virginia.

MOTION TO DISMISS.



No. 19862.

Supreme Court of the United States

W. H. Carfer, Sheriff of Wood County, West Virginia, Appellant,

vs. Upon Proceedings in Habeas Corpus.

C. T. Caldwell, Appellee.

October Term 1905.

No. 360.

Appealed from the Circuit Court of the United States for the Northern District of West Virginia.

MOTION TO DISMISS.

To W. H. CARFER, Appellant:

You will please take notice that on the 8th day of January, 1906, or when this cause is called for hearing and Counsel can be heard, Defendant in Error, Charles T. Caldwell, Appellee, will move the said Supreme Court of the United States to dismiss the appeal heretofore awarded you by the Circuit Court of the United States for the Northern District of West Virginia, on the 1st day of July, 1905, for the following reasons:

I.

Because the said appeal was improvidently awarded.

II.

Because the order allowing the appeal made by the

Circuit Court of the United States for the Northern District of West Virginia on July 1st, 1905, has not been complied with and therefore you are not entitled to said appeal nor any appeal or any proceedings on said order, and this cause is improperly docketed in the Supreme Court of the United States, as appear upon the face of the record and proceedings.

For the foregoing and other reasons appearing on the face of the record and other proceedings in this cause, I will make a motion before said Supreme Court of the United States, as hereinbefore stated, to dismiss the said appeal and to strike this case from the Supreme Court docket.

Chas. T. Caldwell
appellee.
by Counsel

J. G. McClure
of Att'y Counsel
for Caldwell

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Office Supreme Court U. S.
FILED
JAN 6 1906
JAMES H. MCKENNEY,
Clerk.

Supreme Court of the United States.

October Term 1905.

No. 360

Advanced for Hearing Jan. 8th 1905.

W. H. Carfer, Sheriff of wood County. W. Va
Appellant.
vs:
Charles T. Caldwell,
Appellee.

Appealed from the Circuit Court of the United States for the Northern District of West Va.

Brief of the Appellee

Supreme Court of the United States.

October Term 1905.

No. 360

Advanced for Hearing Jan. 8th 1905.

W. H. Carfer, Sheriff of wood County. W. Va.
Appellant.
vs:
Charles T. Caldwell,
Appellee.

Appealed from the Circuit Court of the United States for the Northern District of West Va.

Brief of the Appellee

HISTORY OF THE CASE.

While the only question certified to this Court by the Circuit Court of the United States for the Northern District of West Virginia is that of Federal Jurisdiction. we deem it proper that this Court should be in possession of all the facts in the case as Sidelights to illumine the entire course of this litigation; and, if they do not aid this court

in analysing the opinion of the Lower Court, and in coming to the same conclusion, it will certainly do no harm.

The regular session of the Legislature of West Virginia for the year 1905, during which the cause of these proceedings originated, began the second Wednesday in January, 1905, in pursuance of Section 18, Article 6, of the State Constitution. All regular sessions of the Legislature of West Virginia are limited to forty-five days.

During the latter part of the session of the Legislature for the year 1905, Albert B. White, Governor, whose term of office expired on March 4th following, sent to the Senate, of which body Defendant in Error was a member, a special message reflecting upon the official integrity of Defendant in Error, together with a resolution appointing a committee of investigation of the matters alleged in said special message. The special message was accompanied by a part of a newspaper clipping from an irresponsible publication that attacked Defendant in Error, with others among whom was the then Secretary of State, now Governor, and a Federal Officeholder. The message contained only that part of the scurrilous article of the newspaper referring to Defendant in Error. The special message and resolution shocked the members of the Senate; and, as a matter of course, precipitated a discussion on the floor of the Senate in which the Defendant in Error participated; and during the discussion the Defendant in Error, as a member of the Senate and against whom the charges were directed in said special message of the Governor, knowing the charges were false and unfounded, took part in the discussion and was not very choice in the language he used in defence of the unprovoked, false and malicious assault made upon him in said message and accompaning publication. *All that was said and all charges that were made in debate and discussion of the message, resolution and proceedings, were made while the Senate was in session*, and Defendant in Error cannot be compelled or requtred to answer in any place other than the Senate for anything he said because the latter part of Section 17 of Article 6 of the Constitution of West Virginia provides, "Members of the Legislature shall, in all

cases except treason, felony and breach of the peace, be privileged from arrest during the session and for ten days before and after the Session; and *for words spoken in debate, or any report, motion or proposition made in either House,* A MEMBER SHALL NOT BE QUESTIONED IN ANY OTHER PLACE."

After the discussion of the questions hereinbefore referred to the special message was returned to the Governor by unanimous vote of the Senate by the Sergeant-At-Arms with the request that he accompany his message with the *entire newspaper article* referred to in the message, instead of the garbled part of the article which accompanied his message. The ready made resolution was, upon motion, laid upon the table in the Senate, which resolution was afterwards taken up, amended as shown by the proceedings of the Senate; a committee of investigation, composed of three Senators, Oliver S. Marshall, C. E. Carrigan and W. H. McGinnis, was appointed by the Senate to consider the charges made; and, after reading the evidence and duly considering, Caldwell was exonerated of said charges made against the Governor's message by the Committee, and the Governor received a "Clean Bill of Fare" by the report of the Committee; and, so far as within their power, the escutcheon of his character, if ever tarnished was reburnished. If these proceedings are for the only purpose of vindicating the Ex-Governor and his family; then it is respectfuily submitted he is seeking a novel proceedure for such purpose, and if he has the right to appeal to a Legislative Committee, then we insist he was vindicated by a Committee of the Senate, the only body having jurisdiction to investigate the matters complained of. Defendant in Error simply contented himself by submitting his evidence fully disproving, in every particular, the fowl and false charges made against him in the message and accompanying documents of the Governor. Said committee completely exonerated Caldwell from the unfounded and malicious accusation. It seems the Governor gave no thought of how his message charging Caldwell with infamous conduct as a State Senator. Would effect him and his family. There was present at

said meeting many of the Senators; the Governor, White, who had asked for the Committee of Investigation; W. M. O. Dawson, the then Secretary of State and now Governor of West Virginia, together with a great many other spectators who had gathered for the purpose of listening to the Senatorial investigation. At the urgent solicitation of the then Secretary of State, now Governor, and many others, and because Defendant in Error believed and still believes that the then Governor had no right to question anything that had been said by him in debate or discussion on the floor of the Senate; that the Governor had no right to question or call to account any Senator for remarks made on the floor of the Senate on matters properly before it for discussion or consideration, and especially at *any other place than the Senate*, and not even there for remarks on a public document properly before the Senate for consideration, so long as the criticism did not violate the rules of the Senate. Hence Caldwell declined to offer any evidence, except to refute the charges made against himself.

Not contented with his acquittal, by a committee of the proper form, appointed at his own request, where the language complained of was used, in the expiring hours of the Legislature, while the members were engaged in packing up their Legislative assets, and were congratulating each other on the near approach of the time when their arduous labors would be over and they could return to their home and disappointed constituents, the Governor was attacked suddenly with a fancied suspicion that his acquittal by the Senatorial Committee was an acquittal but not a vindication. Therefore, he sent a special message to the *House of Delegates* claiming that charges had been made against him by a Senator (the same charges investigated by the Senate, the same Senator and the same Governor) which charges had found their way into the columns of the public press, which last message, accompanied by a resolution similar to the one offered in the Senate, reciting that *he* wanted to be exonerated and his *family* vindicated from the charges thus made and asking the appointment of a committee of the HOUSE OF DELE-

GATES to investigate the charges made by a SENATOR on the floor of the Senate in discussion; and the first information of the appointment of said committee received by Caldwell, the Defendant in Error, was after the adjournment of the Legislature when he was summoned before a committee to testify as to what he had said in discussion on the floor of the Senate and what he knew, if anything, about the charges. Thereupon when he was summoned in the City of Parkersburg, One Hundred and Twenty Miles from Charleston, the Seat of Government, by the nearest route by rail, he demanded the fees and his milage and also claimed that he had no right to be questioned about what he had said in the discussion on the floor of the Senate by the alleged Committee of the House of Delegates or anybody else at any place other than the Senate where the charges were made in public discussion, and chalanged the constitutional right of said committee or its attorneys or authorities to arrest him under the attachment issued against him directed to W. H. Carfer, Sheriff of Wood County.

It is true Governor White has an estimable family, and so has Defendant in Error. His family is just as sensitive as the Ex-Governor's family about his character, and as jealous of his good name as the Governor's family is of his name. It is a case of modernizing or applying the old adage, "That people living in glass houses should not throw stones." Or that "Fools often but in where angels fear to tread."

There were no exceptions taken to the findings of the Senate Committee of Investigation. It was a special message addressed to the Senate alone; the committee was appointed at the request of the Governor; the only divergeance from the Governor's prearranged programs was that the Senate appointed the Committee, instead of the President of the Senate, as intended by the original resolution.

HABEAS CORPUS PROCEEDINGS.

The History of these proceedings contained in the record in this case and now before this Honorable Court

upon Appeal involves the jurisdiction of the Circuit Court of the United States for the Northern District of West Virginia in taking cognizance of the petition for Habeas Corpus.

The opinion of Judge Alston G. Dayton of the Northern District of West Virginia, made part of the record, seems to clearly and fully sustain Federal Jurisdiction in this case. To copy the opinion and again cite the authorities contained therein, in this brief, upon which the lower Court based its jurisdiction would be superfluous and therefore we will respectfully request this Court to consider the able, lucid and sound reasoning of Judge Dayton as part of this brief, and in support of the contentions of Defendant in Error.

JURISDICTION.

Section (1) One, Article (1) One, of the Constitution of West Virginia provides that "The Constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme Law of the Land."

Section (3) Three of Article (1) One of the same Constitution further provides that "The Provisions of the Constitution of the United States, and of this State, are operative alike in a period of war as in time of peace, and any departure therefrom or violation thereof, under the plea of necessity, or any other plea, is subervise of good Government, and tends to Anarchy and despotism."

Under the first above cited Section of our State Constitution of the United States is made the Supreme Law of the Land, which includes West Virginia, or at least ought to do so. It is not only a very important part of this land, constitutionally, but politically. In the same Section it is provided that said State of West Virginia "shall remain" as such, never to be severed or blotted out; everlastingly to remain by the express term of the Organic Law. And the Federal Constitution shall be its Superior Law. Therefore, any citizen of the United States and West Virginia has the right, when his life, liberty or property is in jeopardy, to appeal to the

supreme authority of the law, the Constitution of the United States. The great and magnificent document is a shield of protection, beneath, above and around every American citizen. And it is made the highest law in West Virginia.

Section (3) Three, (1) One of the State Constitution says that the Federal Constitution and the provisions of the State Constitution are operative alike in West Virginia. Now if this be true as the State Constitution declares, has not a citizen of this State the right to seek protection under eith r Constitution he may choose. Under this Section of the State Constitution could a valid law be enacted that might be proper under the State Constitution but in conflict with the Federal Constitution? We think not.

The latter part of the fourteenth (14th) Amendment to the Federal Constitution says,

"Nor shall any state deprive any person of life, liberty or property without due process of law, etc.

The same provision is found in the State Constitution and these two provisions are "operative alike"; in the same manner and to the same purpose and effect.

DUE PROCESS OF LAW.

If the proceedings in which the attachment for Caldwells arrest were, wholly without legal authority, and in conflict with the provisions of the Federal Constitution which are of like effect as the provisions of the Constitution of West Virginia, in this State, then the attachment is *not "Due Process of Law,"* but, is a proceeding without "due process of law."

"*Due process of law.*" *undoubtedly means,* in the due course of *legal proceeding* according to those rules and forms which have been established for the "protection of private rights."

Cooleys Const. Lim. 6th ad. p. 433.

Note to Pearson et al against John Yendall et al 95, U. S., page 436, L. Ad. and citations therein made, Portlan vs. Banzer, 65, Me. 120. Am. Reports 681. Same 19. Am. Reports 656.

There is another question of law bearing upon the issue

of jurisdiction to which we desire to direct the attention of this Court. It is this: In the statute of West Virginia Sec. 7, Chapter 12, Code, transplanted from the Law of Virginia, Enacted by the Legislature of that State prior *to the Code of 1819*. It is claimed by Counsel for appellant in their ingeniously and skillfully prepaired brief that Caldwell's remedy is in the State of West Virginia, and that the Federal Courts have no jurisdiction until, at least the highest Court in W. Va. has passed npon the same. This Court will, upon examination, see there is no provision, in this imported piece of the Virginia Statute. 86 year old for any remedy of Error of either Law or fact. No appeal is provided for from the arbitrary rulings or judgment of the alleged Committee; they could consign Caldwell to the dungeon on bread andwater, so far as that statute provides until the next session of the Legislature or indefinitely, no right of exceptions, no remedy by Writ of Error or Appeal. Are proceedings under such a *hydrid* Statue, "*Due process of Law?*"

But there is a far greater reason why the attachment for the arrest of Caldwell is not "due process of Law." If the Court will examine closely, Sec, 7, Ch. 12, Code of W. Va., the power to purish and imprison one for disobedience, is only conferred (1) upon the Legislature, or the branch of the Legislature appointing by the Committee.

(2). Upon a joint Committee or concurrent Committees, appointed by a joint or Concurrent resolution of as the branches of the Legislature.

(1) Disobedience to the summons of the Committee is punished by the presiding officer of the house that appointed the Committee, and *no one else*; No other power. If the Legislature has recessed, adjourned, as it may do under Sec. 23, Art. 6, Const. for any length of time it may agree upon, jointly. Such adjournment would be called a recess, during which adjournment Committees could hold meeting if authorized, and enforce obedience to its Writs, only.

(2) "And when a Commtttee is appointed by each House, under any joint or *concurrent resolution* and directed to sit *jointly*, with authority to examine witness or send for persons and papers, the summons may be signed by the Chairman of the Committee on

the part of the Senate or the Chairman of the Committee on the part of the house of delegates; and disobedience thereto may be enforced as aforesaid by the *house* which appointed the Committee, which directed the summons to be issued; *and if such Committees* be authorized to sit during the recess of the Legislature, then obedience to the summons aforesaid may be enforced *as aforesaid* by the Committee which directed the summons to be issued.

The word "recess" is used in connection with Legislative Committees, and no referrence is made to the Existance of Committees *after the adiournment* of Legislature *Sine-Die*. In fact there is no Law. Neither Sec. 7, Chapter 12, of the W. Va. Code, or any other Statute of the State authorizes the appointment of a Committee *to set* from one *bienvial* session of the Legislature to another session of a new Legislature *two* (2) years hence, My-Gracious; Think, of such power: A Committee consisting of three persons, all from the rural districts. One a farmer, one a stock raiser and the other one a Lawyer, having conferred upon them the power to deprive one of his liberty and incarcerate him in a foul dungeon for life, as there is no limitation to the imprisonment under the Statute referred to, because he refused to bolster up the reputation of an Ex-Governor, and *vindicat his family*, when nothlng disparaging has been said.

In cases where the *right* of appeal seems inadequate by reasons of its delay, the Court may hold the person entitled to the Writ as a means of speedy determination of the question.

Sec. Expartee Keiffer
40 F. R. P. 399.

In Caldwell's case, under the alleged Sec. 7. Ch. 12. There is no appeal provided, and no Writ of Error can issue. This is a much stranger case than the Keiffer case.

In general the Writ may be issued by Federal Courts in *every* case where a party is restrained of his liberty without "due process of law" in the territorial jurisdiction of such Court."

40 F. R. p. 66, Cunningham vs Nagle. 135. U. S. page 1—and authorities there cited. State of New York

vs Eno. 155, U. S. p. 88 and citations. In re. Huse 79, F. R. page 305.

The above authorities sustain several jurisdiction in cases, in which State Courts have been proceeding against violators of the Criminal Laws of such States. It is true they hold it not obligatory upon the Federal Courts to take Cognizance of such cases. But discretionary, only now in Caldwell's the facts and circumstances are far different from those of any of the cases referred to in the above cited authorities. He was arrested for refusing to attend a meeting of an alleged Committee and testify to clear up the reputation of an Ex-Governor who preferred his own charges against himself, and to vindicate his family whose names were never meationed by "A Senator" except in a respectful and most refined manner. It is said in the *Book* of books something about the fathers eating sour grapes and setting their childrens teeth on edge, but this did not refer to the Ex-Governor of West Virginia.

Article Fourteen (14) of the Amendments to the Constitution of the United States provides and says "Nor Shall any State deprive any person of life, liberty or property without *Due Process of Law*." The State Constitution, Section Ten (10) of Article Three (3), page 28 of the Code of West Virginia, of which this Court will take judicial notice, provides as follows: "No person shall be deprived of life, liberty or property without *Due process of Law* and the judgment of his peers." The conjunction "and" in said Section of the State Constitution has been construed to mean "or."—Sec. 27th W. Va., 275.

Now, under Section Three (3) of Article (One) of the State Constitution, hereinbefore quoted, it is provided that, "The provisions of the Federal Constitution operate alike with the provisions of the Constitution of this State." This being the language of the two Constitutions for the protection of life, liberty and property of a citizen, and alike operative in this State, they are of equal force and effect in the State of West Virginia; and being so, there is no question as to the jurisdiction of the Federal Court in proceedings involving the life, liberty and property of

the aggrieved citizen, and in support of this proposition we refer this Honorable Court to the Case of State vs. Sponaugle et al, 45 W. Va., page 424, being the latest declaration of the State Supreme Court of Appeals upon Section 10, and especially that part of said Section which contains the words, "Due process of Law," which has never yet been clearly and fuliy defined and established, because the question of whether or not the proceedings in the case are *Due Process of Law* depends wholly solely and entirely upon the origin and the circumstances of the each separate case, and as long as there continues to be different facts and circumstances arising in the various matters of litigation, no fixed and determined rule can be adopted applicable to every case that may arise in the various Courts, Federal and State. The latest Standard work upon the question of *Due Process of Law*, without which one cannot be deprived of life, liberty or property is McGee on Due Process of Law, being a very late publication. The Supreme Court of West Virginia in the case above referred to, Judge Brannon, one of the ablest jurists in the State of West Virginia, in rendering the opinion of the Court without a discent, at page 424 above referred to, in discussing the question of "*Due Process of Law*," says, "For the first time that amendment 14th to the Federal Courts of Appeals gave the National Government the vote power upon State action upon the citizen not consonant with Due process of Law, but it gave no new definition of the term, "Due Process of Law," or its equivalent; Law of the Land. Before it, the State had final right to say whether the act was Due Process; after it, the Supreme Court has. That is all," Showing that the Supreme Court of West Virginia in its construction of Section 10 of the State Constitution, recognized the fact that the Supreme Court of the United States now has the power, authority and jurisdiction to say and determine what is meant by "Due Process of Law." This Court will bear in mind the fact that the proceedings in which Caldwell was arrested by the Sheriff of Wood County were not instituted in any Court of Record in any suit or procedings from which he would be entitled to an appea l.

It is true the Constitution of the State of West Virginia, to the provisions of which the attention of the Court is respectfully invited, defines the powers and duties of each House of the Legislature, and by implication, if not by plain provisions, says in Section 28, Article 6 of the State Constitution, "Each House shall have power to provide for its own safety, and the undisturbed transaction of its business, and may punish, by imprisonment, *any person* not a member, for disrespectful behavior in its presence; for obstructing any of its proceedings, or any of its officers in discharge of his duties, or for any assault, threat or abuse of a member, for words spoken in debate. But such imprisonment shall not extend beyond the termination of the Session, and shall not prevent the punishment of any evidence, by the ordinary Courts of Law."

This provision of the Constitution does not include for a punishment to any person unless that person *be not a member*. But any person not a member punished by imprisonment by the House in which the offence was committed shall not be kept in imprisonment longer than the termination of the Session.

We further desire to call the attention of this Eminent Court to Section 17 of Article 6 of the State Constitution which provides "Members of the Legislature, in all cases except treason, felony and breach of the peace, be privileged from arrest during the Session, and for ten days before and after the same; *and for words spoken in debate or any report, motion or proposition, made in either House, a member shall not be questioned in any other place.*"

The gravaman of Governor White's complain to the House of Delegates, upon which the Investigating Committee was appointed, is, "That a member of the State Senate had made certain charges against him, which charges had been printed broadcast in the newspapers." Then after reciting the charges and protesting his innocence, he proceeds to state that in the State Senate a committee was raised to investigate these charges; that he and others appeared before the committee and made statements and that it was uhderstood that the committee

would take no further testimony; that he feels that the great charges made against him have not been fully investigated, especially as there were rumors in circulation that there was evidence of the truthfulness of the charges, or one of the charges, made against him, which evidence was not presented but withheld under some sort of alleged agreement or understanding, and this alleged fact had been stated in some newspapers. Then he goes on about the sole power of impeachment under the Constitution, and that if he were guilty of the charges or any of them, he ought to be found guilty and punished by impeachment (an impossible procedure for the want of time if for no other reason) and that he ought to be, if innocent, so declared and his "good name" and that of his family vindicated.

The gravaman, as hereinbefore stated, of this complaint, made by the Governor, is that he wants *"his good name protected and his family vindicated."* His family needs no vindication at the hands of a Legislative Committee. The Committee appointed by the House of Delegates of an expiring Legislature has no authority or power, after the adjournment of the House of Delegates and the entire Legislature, to sit in Star Chamber proceeding for the purpose of inquiring into the *innocency of "Governor White or for the purpose of vindicaiing his fawily,"* who needs no vindication.

The State Constitution of West Virginia, under Section 25 of Article 6 of the State Constitution, "Each House may punish its own members for disorderly behavior with the concurrence of two-thirds of the members elected thereto, expel a member, etc.

The committee asked for by Governor White in his special message to the House of Delegates found at page 23. was dated February 24, 1905, within a few hours before adjournment of the regular Session of the Legislature by reasons of its constitutional limit, in which the charges cemplained of were made by the Senator, if made at all, and within eight days of the Constitutional Limitation the remarkable document, called a message, containing chaages preferred by himself, and the House of

Delegates acting upon said message appointed a committee to investigate after the adjournment of the Legislature This committee was not constituted by a joint resolution of the Legislature which would make it a law, providing the constitution gives any such authority to the Legislature. A proposition which we not only question but deny and we are certain there is no Constitutional provision authorizing the House of Delegates to delegate to a committee its constitutional powers to be exercised when there is no Legislature to exist after the most effectual constitutional death of the House appointing the said committee.

If the Senator referred to in the message of the Governor contained in the record in this case were made in debate on the floor of the Senate, then he cannot be called in question at any other place than in the Senate for words spoken by him in debate. If the charges contained in the Governor's message to the House of Delegates were made by this Senator referred to outside of the Senate and outside of debate, then it is respectfully submitted that Senator is personally liable for any slanderous words he may have spoken, and false libel which he may have caused to be published against the alleged Governor of the State. And if the words were spoken in debate this Senator was not liable to be called in question by the House of Delegates, if it were in Session or out of Session, because of the Constitutional protection for words spoken in debate, and because if the words were spoken outside of the Senate Chamber by the Senator then if not tru they were slanderous and the remedy of the Governor was by action in the Courts of the State.

"But it is not to be supposed that these legislative powers are absolute and despotic, and that the Amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every Act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case, but, in the language of Mr. Webster, in his familiar definition, "The general law, a law which hears before it

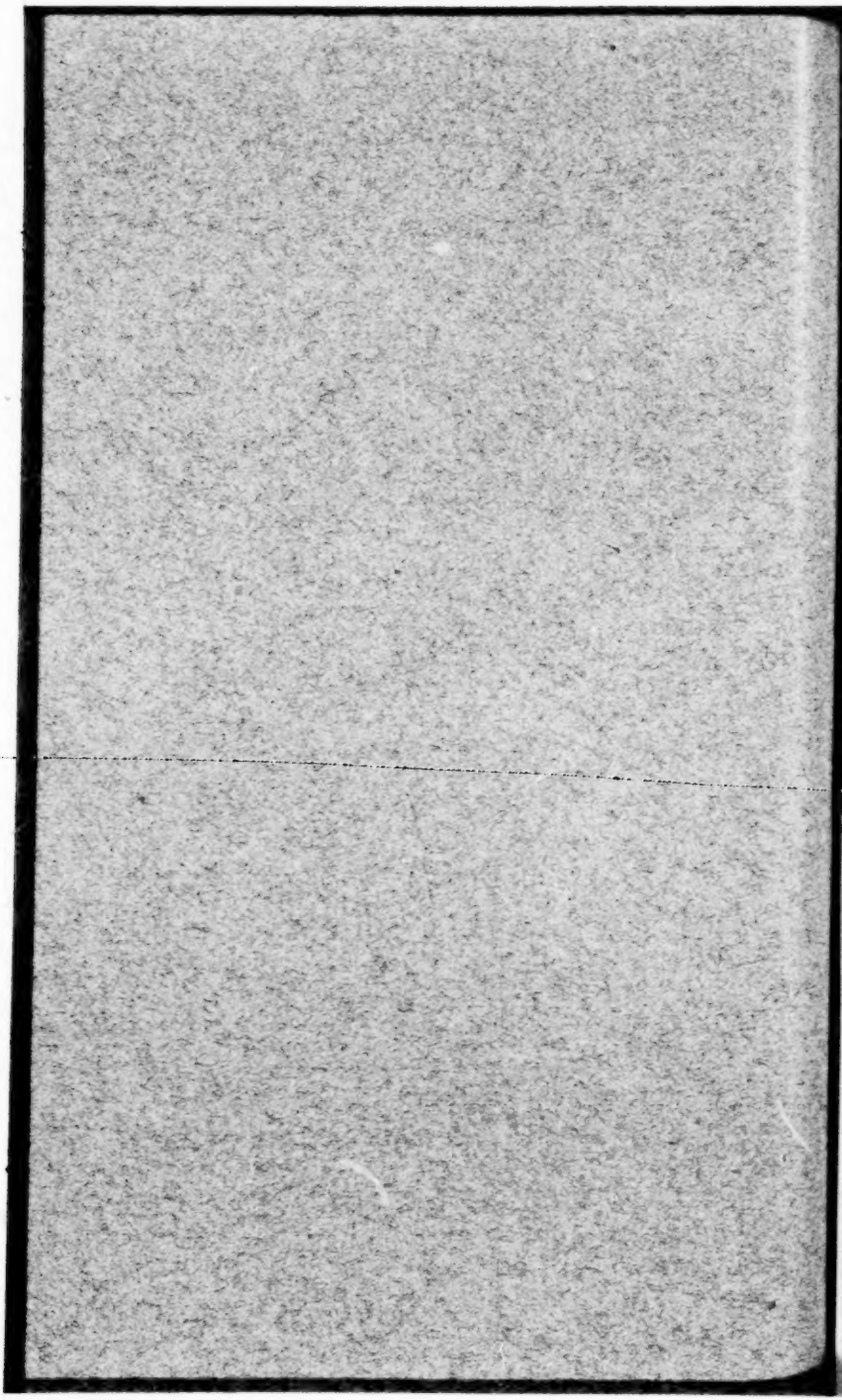
condems, which proceeds upon inquiry, and renders judgment only after trial," so 'that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society," and thus excluding as not due process of law, Acts of attainer, Bills of pains and penalties, Acts of confiscation. Acts reversing judgments and Acts directly transferring one man's estate to another, legislative judgments and decrees, and other similar special, partial and arbitrary exertions or power under the forms of legislation. Arbitrary power, enofrcing its edtcts to the jury of tht persons and property of its subjects, is not law, whether, manifested as the decree of a personal monearch or of an impersonal multitude. And the limitations imposed by our constitutional laws npon the action of the governments, both state and national. are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judical process is the device of self governing committees to protect the rights of individuals and minorities, as well against the power of numbers as against the violence of public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government."——110 U. S, Supreme Report, Lawyer's Edition, page 238—239.

Respectfully Submitted.

Charles T. Caldwell. Appellee

By Counsel.

J. G. McClure, Reese Blizzard and Caldwell & Watson, of Counsel for Charles T. Caldwell.



Supreme Court of the United States.

No. 360.—October Term, 1905.

W. H. Carfer, Sheriff of Wood County, West Virginia, Appellant, *vs.* C. T. Caldwell.	Appeal from the Circuit Court of the United States for the Northern District of West Virginia.

[January 22, 1906.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

This is an appeal from a final order of the Circuit Court in *habeas corpus*, discharging Charles T. Caldwell, a citizen of West Virginia, from custody, taken on the ground that the Circuit Court was without jurisdiction as a court of the United States to issue the writ or discharge the petitioner, the question of jurisdiction being certified. The case was heard on the petition, the return, and the exhibits attached. It appeared therefrom, in brief, that at a regular biennial session of the legislature of West Virginia, the House of Delegates passed a resolution instructing the Speaker of the House to appoint a committee of three members "to investigate fully and thoroughly" certain charges and matters set forth therein. The committee was instructed by the resolution to meet as soon as practicable and select one of its members chairman; was given leave to sit after the adjournment of the session; and was empowered "to compel the attendance of witnesses and to send for persons and papers, to appoint a sergeant at arms, necessary stenographers and clerks, and to employ such counsel as may be necessary to conduct said investigation."

The committee organized and summoned Charles T. Caldwell to appear before them "to testify and the truth to speak of and concerning the matters and things in said resolution to be inquired of." He refused to appear and was taken into custody by W. H. Carfer, sheriff of Wood County, West Virginia, in pursuance of an order of attachment issued by the committee to bring him before them to answer for his contempt for failing to attend and testify. This writ was issued and Caldwell was discharged. 138 Fed. Rep. 487.

The jurisdiction of courts of the United States to issue writs of *habeas corpus* is limited to cases of persons alleged to be restrained of their liberty in violation of the Constitution or of some law or treaty of the United States, and cases arising under the law of nations. *In re Burrus*, 136 U. S.

586, 591; *Andrews* v. *Swartz*, 156 U. S. 272, 275; *Storti* v. *Massachusetts*, 183 U. S. 138, 142.

And it did not appear in this case that petitioner was restrained in violation of the Constitution or any law or treaty of the United States.

The Circuit Court held that the House of Delegates had no power under the Constitution of West Virginia to appoint a committee for the purpose of investigating the matters set forth in the resolution and to clothe it with power to sit and compel the attendance of witnesses in vacation, but took jurisdiction, nevertheless, on the ground that the condition was so "extraordinary" as to "warrant the intervention of the first court, State or Federal, applied to." This view ignored the settled law that a Circuit Court of the United States has no jurisdiction to issue the writ to release a citizen from imprisonment by another citizen of the same State merely because the imprisonment is wrongful. The committee was acting under a resolution of the House of Delegates, and in pursuance of a law of the State, giving power to committees of either house, authorized to sit during recess, to enforce obedience to summonses issued by them; and if they did not have the power they assumed to exercise, it was because the resolution or law, or both, was or were repugnant to the State constitution, and the courts of the State are the appropriate tribunals for the vindication of the State constitution and laws.

The Circuit Court was of opinion that the subject which the committee was appointed to investigate was not within the jurisdiction of the legislature, as defined by article 5 of the constitution of West Virginia, declaring that "the legislative, executive, and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others." But that objection does not "present any question under the due process of law clause of the Fourteenth Amendment." *Dreyer* v. *Illinois*, 187 U. S. 71, 83; *Keetz* v. *Michigan*, 188 U. S. 505.

Viewed in any aspect, we perceive no ground on which Caldwell's case can be considered as arising under the Constitution and laws of the United States.

Final order reversed and cause remanded with a direction to quash the writ and dismiss the petition.

True copy.

Test:

Clerk Supreme Court, U. S.